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R.L. Watts
May 1966.

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Appendix 1

THE PROJECT AS ORIGINALLY APPROVED

MULTI-CULTURAL SOCIETIES AND FEDERALISM

Topic of study

An analysis of experience in other federations containing bicultural or multi-cultural societies in order to see what light they may throw on similar Canadian problems.

The relevance of such a study

There are a number of examples where a federal political system has been adopted particularly to suit a society with bicultural or multi-cultural character. Of the older federations perhaps only Switzerland is a relevant instance since both the U.S.A. and Australia are essentially mono-cultural. But there are a number of significant newer federations where the federal solution has been adopted specifically to meet the needs of a culturally diverse society. Particularly notable among these are India, Pakistan, Malaysia and Nigeria.

In some respects it could be argued that Canadian problems are unique and that therefore experience in other federations is of little relevance to our problems. This is true of the European federations insofar as Switzerland is relatively small and compact by comparison with the continental sweep of Canada, and Germany although containing religious diversities is relatively homogeneous linguistically. When one turns to the Asian and African federations, their relevance may at first sight seem even more remote. To begin with, their societies are

based on non-western cultures, and secondly they are all economically underdeveloped and thus at a different stage of economic development from Canada.

Nevertheless, although any reference to experience in these other federations will certainly have to take account of these differences, this should not be allowed to obscure the point that certain factors make the experience in these other federations peculiarly relevant to the study of bilingualism in Canada. To begin with, (unlike Belgium, Finland, or South Africa, which are not political federations, or the U.S.S.R. which because of a single-party system represents a peculiar federal system), the European federations of Switzerland and Germany, and the Asian and African federations of India, Pakistan, Nigeria and Malaysia have all been examples of the resort to federal political solutions specifically to meet the problems of multi-cultural societies. Indeed in each it was the multi-cultural character of these societies which was the main factor leading to the adoption of federal institutions. Consequently, most of these federations have wrestled with just the sorts of problems Canadians are concerned with: not only problems of recognized national languages, education in different languages, and the cultural impact of a national economy, but also distinctively federal problems of the relation of provincial autonomy to cultural distinctiveness, the impact of a national economy on provincial autonomy, co-operative relations between levels of government, and the place of minorities within provinces. In India, to take only one example, there is already a history of

commissions, committees, and studies concerned with these problems.

Two further points make the experience of the more recent Commonwealth federations of special relevance to Canadians. First, most of these new Commonwealth federations have attempted to copy certain features of Canadian Federalism and in a number of cases to improve upon the Canadian model. It may, therefore, be of some value to examine these instances to see which of these innovations have been successful and which have not. Indeed one may learn not only from their successes but from their failures and difficulties which may provide some guide to the pitfalls to be avoided. The second reason the Commonwealth federations are of particular relevance is that it is only in these examples that we find the combination of federalism and the parliamentary form of institutions of which Canada was the first example. The non-parliamentary character of the Swiss and American executives is sufficiently significant in the politics of these federations to make their experience in some respects less relevant than that of the Commonwealth federations for Canada.

Basis of study and method

Over the last five years since 1959, I have been engaged in a comparative study of the newer Commonwealth federations, specifically India, Pakistan, Malaya, Nigeria, Rhodesia and Nyasaland, and the West Indies. This research has not only provided the basis for a graduate course in comparative federalism which I am currently teaching at Queen's University, but has also been embodied in a book which is in the process of being

published by the Clarendon Press, Oxford, and which is due to appear within the next year. For this book considerable material was gathered on the nature of the societies in these federations, the effect of these societies upon the creation and operation of these federal political systems, and the resulting interaction between the federal structure and the social forces. The book, however, does not attempt to relate this analysis of federalism to Canadian problems. The proposed study, therefore, would draw upon the extensive information already largely gathered, but would relate it specifically to those issues involved in the relation between Canadian federalism and bilingualism and biculturalism.

Scope of suggested study

The study would encompass the following topics:

1. Different conceptions of federalism as applied to other bicultural or multi-cultural federations.
2. The significance of the character of the regional political units: differences arising from the internally homogeneous or heterogeneous cultural character of provinces or states; the conceptions of provinces or states as cultural 'homelands' for cultural minorities; institutions for the protection for minorities within provinces or states; the significance of the equality or inequality in status of provinces or states.
3. The cultural impact of the distribution of legislative and executive authority between governments; different forms which the distribution of authority within federations may take.

4. The cultural impact of economic policies within federations: the effect of economic policies and factors upon regional cultural distinctiveness; the significance of the federal distribution of economic powers and financial resources; the relation of different forms of economic planning to the federal structure and to cultural diversity; the forms of intergovernmental consultative machinery which have been developed to deal with economic and financial matters.
5. The operation and effectiveness of intergovernmental relations and co-operation generally: the different forms of intergovernmental consultative institutions; the checks of each level of government upon the other.
6. The effect of different policies regarding the recognition and status of official national languages and cultures: forms of recognition and status for official national languages and religions; the relation of these to the assignment of governmental responsibility for education; the role of bicultural and multi-cultural symbols in fostering political unity.
7. The degree to which special arrangements for federal capital cities reflecting the linguistic and cultural variety and harmony of the federation have proved desirable.
8. Those aspects of the institutions of central government which have been designed specifically to suit a bicultural or multi-cultural federation: the representation of regional and cultural groups in the central executive and legislature; the status of official languages in governmental

operations; the composition of federal civil services and their language requirements.

9. Other constitutional safeguards incorporated in these federations: different ways of entrenching the constitution and the devices by which attempts have been made to achieve increased flexibility at the same time, the role of the courts and especially the supreme courts; the role of bills of fundamental rights; other special arrangements to provide recognition and safeguards for linguistic and cultural minorities.

Appendix 2

THE LINGUISTIC COMPOSITION OF MULTI-CULTURAL FEDERATIONS

Table 1: Canada - Distribution of the Population by Mother Tongue

Province or Territory	English %	French %	Other %
Canada	58.45	28.09	13.45
Newfoundland	98.61	0.68	0.69
Prince Edward Island	91.33	7.60	1.05
Nova Scotia	92.29	5.36	2.33
New Brunswick	63.32	35.20	1.46
Quebec	13.26	81.18	5.55
Ontario	77.52	6.82	15.65
Manitoba	63.41	6.60	29.97
Saskatchewan	68.97	3.90	27.11
Alberta	72.24	3.17	24.57
British Columbia	80.93	1.60	17.45
Yukon	74.30	3.02	22.66
Northwest Territories	35.58	4.32	60.10

Source: A Preliminary Report of the Royal Commission on Bilingualism and Biculturalism (1965), p.194.

Table 2: Switzerland - Distribution of the Population by Mother Tongue

Canton	German %	French %	Italian %	Romanche %	Other %
Switzerland	74.1	20.6	4.0	1.1	0.2
Zurich	93.4	2.1	3.2	0.4	0.9
Berne	83.0	15.0	1.5	0.1	0.4
Lucerne	97.0	1.0	1.6	0.2	0.2
Uri	96.8	0.4	2.5	0.3	0.0
Schwyz	97.4	0.4	1.7	0.3	0.2
Obwalden	98.0	0.5	1.1	0.1	0.3
Nidwalden	97.6	0.6	1.5	0.2	0.1
Glarus	93.6	0.6	5.2	0.4	0.2
Zug	94.5	1.1	3.6	0.3	0.5
Fribourg	32.9	65.7	0.9	0.1	0.4
Solothurn	95.5	2.2	2.0	0.1	0.2
Basle Town	92.0	4.3	2.7	0.2	0.8
Basle Country	95.1	2.0	2.5	0.1	0.3
Schaffhausen	96.1	0.9	2.6	0.2	0.2
Appenzell Outer Rhodes	97.5	0.4	1.5	0.2	0.4
Appenzell Inner Rhodes	99.1	0.1	0.6	0.1	0.1
St. Gallen	96.9	0.5	2.0	0.4	0.2
Grisons	56.2	0.7	13.2	29.2	0.7
Aargau	96.8	1.0	1.8	0.2	0.2
Thurgau	96.4	0.5	2.7	0.2	0.2
Ticino	9.1	1.4	88.8	0.2	0.5
Vaud	11.1	84.5	2.9	0.1	1.4
Valais	33.2	65.0	1.6	0.0	0.2
Neuchâtel	11.8	84.6	3.1	0.1	0.4
Geneva	13.6	77.6	5.3	0.1	3.4

Source: Annuaire statistique de la Suisse, 1953, p.37

Table 3: India - Population by Mother Tongue

Language	No. people speaking in millions	Percentage of total population	States of which principal languages	
			Single	Dual
Assamese	4.99	1.39	-	Assam
Bengali	25.12	7.03	W. Bengal	-
Gujarati	16.31	4.57	Gujarat	-
Hindi	149.94	42.01	{ Bihar, Madhya Pradesh, Uttar Pradesh	Punjab
Urdu				Jammu & Kashmir
Hindustani				-
Punjabi				Punjab, Rajasthan
Kannada	14.47	4.05	Mysore	-
Kashmiri	N/A*	N/A*	-	Jammu & Kashmir
Malayalam	13.38	3.69	Kerala	-
Marathi	17.05	7.57	Maharashtra	-
Oriya	13.15	3.68	Orissa	-
Tamil	26.55	7.4	Madras	-
Telegu	33.00	9.24	Andhra Pradesh	-
Other languages	32.91	9.22	-	-

Sources: Report of the Official Language Commission, 1956 (New Delhi, 1957), pp.27-8

* Figures do not include Jammu and Kashmir where no census was taken in 1951.

Table 4: Pakistan - Distribution of Population by Language

Province or Territory	Bengali %	Baluchi %	Punjabi %	Pushtu %	Sindhi %	Urdu %	Other %
Pakistan	56.0	1.5	29.0	4.9	5.9	7.3	2.4
East Pakistan	98.0	-	.02	-	.02	1.1	2.0
West Pakistan:							
Baluchistan	-	27.0	14.0	47.0	9.2	13.0	4.9
Baluchistan States Union	-	56.0	.3	.5	32.0	1.7	1.4
Karachi	.5	9.2	9.5	3.7	17.0	68.0	11.9
North-West Frontier Prov.	.03	.01	42.0	75.0	0.1	5.6	1.4
N-W Frontier Regions	-	-	4.0	85.0	-	2.2	2.0
Punjab	.02	.03	96.0	.3	0.2	16.0	3.7
Bahawalpur	-	-	97.0	.3	0.5	13.0	3.0
Sind	.02	11.0	3.4	0.4	79.0	14.0	1.9
Khairpur	.01	3.6	4.4	0.2	92.0	5.0	.9

Source: Census of Pakistan, 1951, (Karachi), Table 7A.
 Under each language this table includes persons speaking a language as a mother tongue and as an additional language.

Table 5: Malaya - Distribution of Population by Race

States	Malay [*] %	Chinese %	Indian ⁺ %	Other %
Malaya	49.46	38.40	10.81	1.33
Former F.M.S.:				
Perak	37.80	46.60	14.70	0.90
Selangor	25.35	51.03	20.43	2.19
Negri Sembilan	41.30	42.74	14.23	1.73
Pahang	54.27	38.90	5.89	0.94
Former U.M.S.:				
Johore	43.84	48.06	7.46	0.64
Kedah	68.01	20.91	9.26	1.82
Kelantan	92.05	5.11	1.10	1.74
Trengganu	91.98	7.02	0.78	0.22
Perlis	78.29	16.72	2.39	2.60
Former Settlements:				
Penang	30.54	55.42	12.81	1.26
Malacca	50.27	40.17	8.24	1.32

Source: Malaya, A Report on the 1947 Census of Population, pp.40-1

*Includes immigrants from Indonesia.

⁺Includes Indians, Pakistanis and Ceylonese.

Table 6: Malaysia - Distribution of Population by Race

States	Malays* %	Chinese %	Indians ⁺ %	Others %
Malaysia (excl. Singapore)	43.4	35.6	9.8	11.2
Malaysia (incl. Singapore)	38.5	42.1	9.7	9.7
Malaya	49.1	37.2	11.7	2.0
Sabah (N. Borneo)	5.7	23.1	0.7	70.5
Sarawak	17.9	30.8	0.3	51.0
Singapore	13.6	75.4	9.0	2.0

Sources: 1957 Population Census of the Federation of Malaya, Reports No. 1 and No. 14 (Kuala Lumpur, n.d.); Colony of North Borneo, Report on the Census of Population, 1960 (Kuching, 1962); Colony of Sarawak, Report on the Census of Population, 1960 (Kuching, 1962); 1957 Census of Population, Singapore, Preliminary Release No. 7 (Singapore, 1959).

*Includes immigrants from Indonesia.

⁺Includes Indians, Pakistanis, and Ceylonese.

Table 7: Nigeria - Distribution of Population by Principal Ethnic Groups

Region or Territory	Hausa-Fulani %	Ibo %	Yoruba %	Edo %	Others %
Nigeria	28.1	17.9	16.6	1.5	35.9
Eastern Region	0.2	68.2	0.2	0.1	31.3
Mid-Western Region	0.3	17.7	0.3	28.1	53.6
Northern Region	50.6	1.0	3.2	0.1	45.1
Western Region	1.0	1.8	94.7	0.5	2.0
Lagos	1.5	11.9	73.4	2.1	11.1

Sources: Population Census of the Eastern Region of Nigeria, 1953, Bulletin no. 1 (Lagos, 1954), pp.18-19; Population Census of the Northern Region of Nigeria, 1952 (Lagos, 1952-3); Population Census of the Western Region of Nigeria, 1952 (Lagos, 1953-4).

Table 8: Rhodesia and Nyasaland-Distribution of Population by Race

Territory	Population (1959)			Electorate (1959)		
	African %	European %	Others %	African %	European %	Others %
Federation	95.8	3.7	0.5	7.4	88.4	4.2
N. Rhodesia	96.5	3.1	0.4	19.3	73.6	7.1
Nyasaland	99.2	0.3	0.5	1.2	80.1	18.7
S. Rhodesia	92.0	7.5	0.5	3.2	94.3	2.5

Source: Cmnd. 1149/1960, Advisory Commission on the Review of the Constitution of the Federation of Rhodesia and Nyasaland, Report: Appendix VI (London, 1960), pp. 11, 326-8.

Appendix 3

DISTRIBUTIONS OF LEGISLATIVE AUTHORITY BETWEEN CENTRAL AND
REGIONAL LEGISLATURES

The distribution of legislative authority expressly mentioned in the Constitutions or necessarily implied from them is indicated in the following table by the letters F (Federal), C (Concurrent), and R (Regional). If a subject is not mentioned in the Constitution, either because the power to legislate for it is intentionally assigned to the authority exercising residuary power, or because it is not applicable in that Federation, the space in the table has been left blank; the assignment of the residuary power is, however, shown in the first line of the table. Where a Federal power is more restricted than would be implied by the letter F alone, it is shown as FR to indicate that some aspects of the power are Regional, or that Regional consent is required for the exercise of Federal authority in that field. Fr indicates Federal powers which can only be exercised after consulting Regional Governments, but do not require their consent. The content and allocation of some subjects, particularly external affairs, defence, law and procedure, machinery of government, parliamentary privilege and emoluments, taxes and loans, and trade are often more complex than might appear from the table, and reference must be made to the Constitutions themselves for details.

It should be noted that in some federations, the distribution of legislative authority does not apply equally to all autonomous regional governments. In India, some items on the

Union List and the whole of the Concurrent List do not apply to the State of Jammu and Kashmir, but no notation of these items has been made in the table. For Rhodesia and Nyasaland, F* signifies Federal in Southern Rhodesia only, and C* represents Concurrent in Northern Rhodesia only (after 1956). Under the Malaysia Constitution (1963), certain exceptions applied solely to the new states of Sabah, Sarawak or Singapore. Items marked F+ or C+ are those which in some of these Malaysian states came wholly or partially under state control or required state consent for the exercise of Federal authority. Items marked F^x became wholly or partially concurrent in the case of some of these same states.

Source for this table is R.L. Watts, New Federations: Experiments in the Commonwealth (Oxford, 1966), pp. 363-6.

RESIDUARY POWER		Whether regional powers are listed									
	Canada	Australia	India	Pakistan 1958	Pakistan 1962	Malaysia	Nigeria	Rhodesia & Nyasaland	West Indies		
External Affairs	F Yes	R No	F Yes	R Yes	R No	R Yes	R No	R No	R No		
Treaty implementation.	FR	C	F	F	F	F	F	F	FC		
Citizenship and aliens	F	C	F	F	F	F+	F	FC	C		
Immigration: into Federation.	C	C	F	F	F	F+	F	FC	F		
between Regions.			F	C		C+	C	C	C		
Defence.	F	FC	F	F	F	F	F	F	F		
Police		C	R	R	R	F	FrR	FCR			
Public order			R	R	F	C	C	C	C		
Prisons.	FR		R	R		F					
Preventive detention			C	FR	FR	F					
Law and procedure.											
Civil.	FR	C	C	C		FR ^x +R	CR	CR	C		
Personal	FR	C	C	C		F ^x	FR		CR		
Criminal	F		C	C		F			C		
Constitution and organization of courts	R		FR	FCR	FR	F+	FR	FCR	FR		
Machinery of government.											
Public services and pensions	FR	FR	FR	FR	FR	F+R	FR	FR	FR		
Elections:											
Federal.			F	Fr	F	F ^x	F	F	FR		
Regional			FR	Fr	F	F ^x			FR		

<u>Finance</u>		Canada	Aust.	India	Pakistan 1958	Pakistan 1962	Malaysia	Nigeria	Rhodesia & Nyasaland	W.I.
Foreign exchange.	. . . . .			F	F	F	F	F	F	F
Currency and coinage.	. . . . .	F	FC	F	F	F	F	F	F	F
Foreign Loans		FR	C	F	FC	FC	F ^x	FR	FR	C
Internal Loans		FR	C	FR	FR	FR	F ^x	FR	FR	FC
Public Debt		F		FR	F	FR	F	F		FC
Audit				F		F	F	FR	FR	FC
<u>Taxes:</u>										
Customs		F	F	F	F	F	F+	F	FR	CR
Excise.		F	F	FR	FR	F	F+	F	FR	CR
Corporation		FR	C	F	F	F	F	F	FR	C
Personal income		FR	C	FR	FR	FR	F	FR	FR	CF
Sales taxes		FR	C	FR	FR	F	F+	FR	FR	
Other taxes		FR	C	FCR	FR	FR	F+R			RC
Banking		F	CR	F	FC	FR	F ^x	F	FC	C
Cheques and bills of exchange		F	C	F	F	FR	F	F	F	C
Stock exchanges				F	FC	F	F ^x			
Money lending				R	R	FR	F ^x			
<u>Trade, commerce and industry</u>										
External trade.		F	C	F	F	F	F ^x	FR	F	C
Inter-regional trade.		F	C	F	F	F	F ^x	FR	C	C
Intra-regional trade.		R		RC	R		F ^x		FR	
Corporations and companies.		FR	CR	FR	FCR	FR	F+	FR	FR	C
Insurance				F	FC	FR	F ^x	FR	FR	C
Patents, trade marks, copyright		F	C	F	F	F	F	F	F	C
Weights and measures.		F	C	FR	FR	F	F	F	F	C
Industries.				FCR	FR	FR	F ^x	C	C	C
Mines and oilfields				FR	FCR	FR	F	F		
Factories				C	R		F+			
Price control				C	C		F ^x		F	
Co-operative societies.				R	R		F		CR	

<u>Planning</u>		Canada	Aust.	India	Pakistan 1958	Pakistan 1962	Malaysia	Nigeria	Rhodesia & Nyasaland	W.I.
Economic and social.				C	C	F	F+r C		C	
Town and country										
<u>Shipping and navigation</u>										
Maritime		F		F	FR	FR	F ^x	F	F	C
Inland waterways		FR		FRC	R		F ^x R	FR	F	
Ports.				FC	FR	FR	F+x	FR	F	
Fishing.		F	CR	FR	FR	FR	F ^x R			CR
<u>Communications and transport</u>										
Roads and bridges.				FR	R		FR	FR	FC	
Railways		FR	C	F	FR	R	F+	F	F	C
Air.				F	F	F	F	F	F	
Regulation of traffic.							F+R	CR	C	
Carriage of passengers and goods							F ^x			
Mechanical vehicles.				F	R		F		F	C
Posts and telecommunications		FR	FC	C	Fr	F	F	F	C	
Broadcasting and television.				F	F	F	F	FR	C	
<u>Utilities</u>										
Water.				FR	R		F ^x R	FC	FR	
Electricity.				C	R		F ^x +	CR	C	
Gas.				R	R	F	F+	CR		
Nuclear energy				F		F		F	F	C
<u>Education</u>										
Elementary and secondary		R		R	R		F+	FC	FR	F
University		R		FR	R		F+		F	
Teacher training		R		R	R		F+			FR
Libraries.				FR	FR	FR	F+	F		FR
Museums.				FR	FR	FR	F+	C	FR	
Archaeology and monuments.				FCR	CR	FR	F+			
Scholarships		R	C	R	R		C+			C

<u>Medicine and Health</u>									
Hospitals and clinics. . . .									
Lunacy	R								
Poisons and drugs.	R								
Liquor									
Public health and sanitation									
<u>Labour and social services</u>									
Trade unions									
Industrial disputes.									
Unemployment relief.	F								
Workmen's compensation									
Social security.									
Social welfare services.									
Charities.									
Women and children									
Vagrancy									
<u>Land</u>									
Tenure	R								
Prospecting.									
Compulsory acquisition									
Transfer	R								
Reservations	F								
<u>Agriculture</u>									
<u>Forestry</u>									
Agricultural pests and diseases									
Agricultural loans									
Animal husbandry									
Drainage and irrigation.									
Soil erosion									

Canada	Aust.	India	Pakistan 1958	Pakistan 1962	Malaysia	Nigeria	Rhodesia & Nyasaland	W.I.
		R	R		F+x		C	
		C	R		F+x			
		FC	CR		F+x	CR		
		R	R		F+x			
		R	R		C		C	
		C	C		F+	C		C
	CR	C	C		F+	C		C
		R	R		F+			
		C	C		F+			
	C	C	C		F+		F	
	C	C	C		Cx			
		C	R		F		C	
		C	R		C			
					C			
		R	R		CR			
		FR	R		R			
	C	C	R		R			C
		CR	R		R			
		F	F	F	RF			
		RC	R		R		F*C*R	
		R	R		Rx		F*C*R	
		RC	R		F			
		R	R		R		F*C*R	
		R	R		C		FR	
		FR	R		C		F*C*R	
					C			

	Canada	Aust.	India	Pakistan 1958	Pakistan 1962	Malaysia	Nigeria	Rhodesia & Nyasaland	W.I.
<u>Local government.</u>	R		R	R		F+R			
Fire brigades			R	R		R			
Burial and cremation grounds.			R			R		F*C*R	
Pounds and cattle trespass.			R	R		R			
Markets and fairs			R	R		R			
<u>Miscellaneous</u>									
Survey.			F	F	F	F+	C	C	C
Census.	F	C	F	F	F	F	C	C	C
Statistics.	F	C	C	FRC	FR	F	C	C	C
Meteorology		C	F	F	F	F	F	F	
Aborigines.	F		FR	FR	FR	F+x	C	FR	
Professions			C	R		F			
Holidays.						FR		C	
Newspapers and printing			C	C		F			
Licensing of films.			F	R		F ^x R			
Entertainment and sports.			R	R		C	C	FR	
Wild animals and National Parks			R	R		F			
Lotteries			F	R		F			
Betting and gambling.			R	R		F ^x			
Research.			FCR	FCR	FR	F	C	C	F

Appendix 4

FEDERAL FINANCE

Table 9: Comparison of Central and Provincial Current Revenues and Expenditure

Federation Year	Percentages of Total Public Revenues*			Provincial expenditure as % of Central plus Provincial Expenditures
	Central Revenue (before transfers)	Provincial Revenue (before transfers)	Inter-Gov't transfers	
Malaya 1959	89	11	7	17
The U.S.A. 1959-60	79	21	5	26
Australia 1960-61	80	20	17	37
Canada 1960-61	75	25	12	37
Canada 1962-63	68	32	12	41
R. & N. 1958-59	70	30	14	43
Pakistan 1962-63	69	31	19	49
Nigeria 1959-60	84	16	37	54
India 1960-61	60	40	20	58
W. Indies 1959-60	1	99	2+	97

*Combined central and provincial revenues, excluding municipal revenues.

+Mandatory levy on Territories for transfer to Federal Government.

Table 10: Comparison of Composition of Provincial Current Revenues

Federation Year	Percentages of Total Provincial Revenues				Total Transfers
	Independent Revenue	Share of Central Taxes	Unconditional Grants	Conditional Grants	
Canada 1960-61	67	16	2	15	33
Canada 1962-63	73	5	2	20	27
Australia 1963-64	61	--	36	3*	39*
India 1960-61	65	19	5	11	35
Pakistan 1962-63	51	34	1	14	49
Malaya 1960	59	2	34	5	41
Nigeria 1959-60	28	72	--	0.2	72
R. & N. 1959-60	65	28	--	7+	35
W. Indies 1959-60	98	--	--	2	2

*Excludes specific purpose capital grants equivalent to 10% of state current revenues.
 +Reimbursement for inter-governmental services.

Sources for Tables 9 and 10: Historical Survey: Financial Statistics of Governments in Canada, 1952-62, Dominion Bureau of Statistics, Catalogue No. 68-503 (Ottawa, 1960), Tables 1, 2, and 17; Annual Budget Statements, Finance Commission Reports, Statistical Abstracts and Year Books for other federations.

Appendix 5

A SURVEY OF THE NEW COMMONWEALTH FEDERATIONS1. The Union of India

When the confusion and disunity of eighteenth century India provided the opportunity for conquest by the British, the continent was divided from the outset into two groups of areas under different forms of government: British India comprising a number of provinces under direct British administration, and the Indian states which, by treaty or usage, were broadly speaking autonomous regarding their internal affairs but which accepted the suzerainty of the Crown and its control of their external relations.¹

The part of India under direct rule was divided by the East India Company into three presidencies, Calcutta, Madras and Bombay, each being until 1833 virtually autonomous. In 1833, however, the Governor-General and Council of Bengal were made the supreme authority in India, being vested with complete control in all matters legislative, administrative and financial, and the system remained unchanged when in 1858 the administration of British India passed from the East India Company to the Crown. The concentration of authority at the centre continued to be a cardinal feature of British India until 1919. The Indian Councils Act, 1861, however, restored some legislative power to the

¹For the history of the British Provinces up to 1935 see especially: P.N. Masaldan, Evolution of Provincial Autonomy in India (Bombay, 1953), chapters 1, 2, and 6.

Councils in the Presidencies, and the subsequent history of British India was one of the gradual devolution of power to the provinces, as administrators realized the danger of losing contact with their Indian subjects.¹ Under the Government of India Act 1919, although provincial autonomy was still limited, provincial governments were freed to a large extent from central control, thus laying the foundations for future federation.

Meanwhile, in the Indian States, the parts of India controlled through indirect rule, the loyalty of the Princes generally during the mutiny had demonstrated their value, and subsequent British policy aimed at the preservation of these princely states except in cases of flagrant misgovernment. The states were kept outside the scope of parliamentary legislation applying to the British Indian Provinces, and relations with the states were carried on through a special Political Department directly responsible to the Governor-General. The 562 princely states, varying in size from Hyderabad with an area of 82,313 square miles to some 202 states of less than 10 square miles, together composed two-fifths of the area and a quarter of the population of continental India. They did not, however, form a block of contiguous territory, but were scattered over every portion of the map of India, and about the only factor common to all these

¹ Further Indian Councils Acts in 1892 and 1909 enhanced the legislative powers of the provincial legislatures, and the financial settlements of 1870, 1877, 1882, 1904, and 1912 enlarged the sphere and reduced the uncertainty of provincial finance. The ultimate supremacy of the central government was, however, retained intact.

heterogeneous units was their relationship to the British Crown, the Paramountcy relationship of the Crown resting both on treaties and on usage and suffrance.

The Government of India Act 1935, the product of an elaborate and complex process of preparation, "finally broke up the unitary system under which British India had hitherto been administered.... [and] committed India to a federal form of government".¹ A federal structure was seen at this time as the solution to a number of problems facing India. First, the independence of British India and the Indian States in terms of communications and economics made desirable some political unity, but this required yoking together in one structure the Princes, with their autocratic regimes and jealous of their sovereignty, and the Congress, entrenching itself in the British Provinces, hostile to the princes as undemocratic and anti-national. Federation suggested a way of bringing together the two Indias in a common constitutional system, thus providing a meeting point for the two earlier British policies. Secondly, since the increasing communal antagonism evident after 1919 was attributed to the Congress emphasis on monolithic unity and centralization and to Muslim fears of Hindu predominance, a federal structure suggested a means of accommodating Muslim anxieties within a united India. Thirdly, the defects and complexities of dyarchy experienced in the provincial governments pointed to the desirability of full responsible government in the provinces,

¹R. Coupland, Report on the Constitutional Problem in India (London, 1943), Part I, p. 141.

and this required provincial autonomy. Finally, British distrust of the Congress, which had become quasi-revolutionary in character, made attractive the prospect of a central legislature in which the nominated representatives of the princes would provide a counterbalancing conservative bloc.

The Government of India Act, 1935, in many respects set the major outlines of the federal system adopted after independence. The 1935 Act provided for an All-India Federation consisting of eleven Governor's Provinces and of such States as acceded to the federation by individual instruments of accession.¹ While the division of legislative, administrative and financial powers between the central and provincial governments were spelled out in precise detail in the Act, the powers of the federating states were left to be determined by the instruments of accession. The division of legislative powers between the central and provincial governments was laid out in three exhaustive lists of federal, provincial and concurrent powers; residual powers were to be assigned by the Governor-General acting in his discretion; the financial provisions drew a distinction between powers of taxation and sources of revenue, the tax jurisdiction of the central government being wider than the revenues it might keep; the power of amendment was reserved to the British Parliament, but flexibility was intended in the right given to the Provinces

¹The establishment of the federation was to be conditional upon the accession of the Rulers of States with at least half the total population of all the states (Government of India Act 1935, (26 Geo 5, Ch. 2), ss. 5, 6).

to delegate their powers to the central government and in the emergency powers assigned to the central government; a Federal Court was established, although appeals to the Judicial Committee of the Privy Council were left possible; a bicameral central legislature was provided for, and the central executive was to be based on the principle of dyarchy, giving the Governor-General considerable authority. The provinces were invested "for the first time with a separate legal personality" and moved forward from dyarchy to almost completely responsible government. Some safeguards, bitterly attacked by the Indian nationalists were placed, however, in the hands of the Governors, and the scope of provincial autonomy was also limited by some constitutional provisions concerning legislative, administrative, and financial relations between the central and provincial governments, and by those concerning emergencies. Thus Coupland described it as "a federation with, so to speak, a unitary bias: it is more akin to the Canadian federation than to that of Australia or the United States".¹

In spite of lengthy negotiations right up to 1939, the princes, deterred by the undisguised hostility and large-scale agitation of the Congress in the states after 1937, proved reluctant to give up their sovereignty. As late as 1939, the required number of states had not acceded, and as a result the part of the Act dealing with the central government never came into force. The sections dealing with provincial government,

¹Coupland, Op.cit. Part 1, p. 141.

however, went into effect in 1937 following provincial elections in the winter, six provinces having Congress ministries, four non-Congress ministries, and one a coalition. The Niemeyer Award, providing for unconditional grants to the provinces, removed fears of central interference.¹ In practice, provincial autonomy appeared to be a success, resort to the safeguards being rarely necessary until 1939.²

The pattern of provincial responsible government suffered a setback in November 1939 when all the Congress provincial ministries resigned at the request of the Congress central executive, over India's participation in the war. As a result, in these provinces the Governors were forced to assume comprehensive powers in most cases for the duration of the war. Under the improved immediate post-war conditions, however, it proved possible to hold fresh elections and by 1946, constitutional government with popular ministries had been restored in all the provinces.

Indian politics after 1937 was characterized by an intensification in communal antagonism and strife and by the solidification of Muslim support for the Muslim League. When the

¹Government of India, (Distribution of Revenues) Order, 1936.

²The provincial autonomy intended by the Act was in a sense negated, however, since the Congress provincial ministries were closely supervised and controlled by the Congress central 'high command' and after 1939 the Muslim League developed the same sort of control over the domestic politics of the Muslim provinces.

Congress in 1937, seeing its electoral victory as an opportunity to strengthen its position as the sole and exclusive embodiment of Indian nationalism, refused co-operation with the Muslim League, Jinnah and the League became convinced that the only alternative to Hindu domination was for the Muslims to separate themselves to form a state of their own. The League abandoned its policy of trying to co-operate with the Congress and in the famous Lahore Resolution of 1940 took up the demand for partition and the creation of a separate Muslim state. Confronted with the prospect that they would be a permanent minority in a Hindu raj, Muslims in large numbers swarmed to support the Muslim League with a new solidarity. As a result, in the 1946 elections fought on the issue of Pakistan, the League captured every seat reserved for the Muslims.¹

During the period 1942-7, there were numerous efforts to resolve the political deadlock, and because of its direct bearing on the solution of the communal problem, central-provincial relations became a focal issue. The Muslims, strong in certain provinces, feared the overwhelming Hindu majority in the central government and therefore demanded that the central government should be limited in scope and power. The Congress, genuinely believing in the unity of India, and conscious of their own strength, pressed for a strong central government. Various schemes were advanced to reconcile these points of view, but failed to receive general agreement. The Draft Declaration

¹The growth of Muslim support for the League was aided by the political vacuum resulting from the outlawing of the Congress 1942-1945.

advanced by the Cripps Mission in 1942 proposed a post-war constituent assembly of provincial representatives to create a union constitution but included the right of any province to secede. The unofficial Coupland Report of 1943 suggested a three-tier federation in which the largely autonomous provinces would be grouped into four economic regions based on the main river basins, two regions being predominantly Hindu and two predominantly Muslim, the four regions being brought together by an 'Agency Centre', "something between a federation and a confederation".¹ The Rajagopalachari formula of 1944 accepted the principle of a Pakistan, subject to a plebiscite of all the inhabitants of the Muslim-majority areas, but in discussions on it Gandhi and Jinnah failed to come to agreement on several issues. In 1945 a 'Conciliation Committee' under Sir Tej Bahadur Sapru proposed a weak central government with the minimum necessary powers, but with no right of secession. Even the Viceroy's attempt at the Simla Conference 1945 to reconstitute the Viceroy's Executive Council with Indian members failed due to Congress and League disagreement over the right of nominating Muslim members. The Cabinet Mission Plan of 1946 rejected partition as impracticable and proposed a three-tier federation. The central government's powers were to be limited to foreign affairs, defence, communications and the finances necessary for these, and the provinces were to be free to form groups, each group being free to determine the range of its powers and to frame the constitu-

¹Coupland, Op.cit., Part III, Ch. 11.

tions of its provinces.¹ The Congress accepted the plan, but by interpreting it in a way repudiated by its authors destroyed the basis of compromise. As a result the Muslim League, although it joined the interim government, rejected the long-term proposals and refused to attend the Constituent Assembly.

In the spring of 1947, Lord Mountbatten, the new Viceroy, decided, as a result of negotiations, that partition was unavoidable and that the transfer of power should be concluded as rapidly as possible to prevent a further deterioration in the communal hostility. The Statement of June 3rd proposed that the decision to partition the country and the provinces should be made by the people themselves through the legislatures or by referendum. By the end of July the legislatures of Bengal, Punjab and Sind, a meeting of the tribal representatives in Baluchistan, and the voters in referenda in Sylhet and the North-West Frontier Province had decided upon partition. The Indian Independence Act, 1947, then provided for the establishment of two independent Dominions on August 15, 1947.²

The Indian Independence Act, 1947, assigned to the Constituent Assemblies of India and Pakistan, sovereign constitution-making authority unfettered by limitations of any kind, and at the same time provided that the Government of India Act 1935 should serve in the meantime as an interim constitution in each of the two Dominions, the Constituent Assemblies acting as the

¹Cmd. 6821/1946, Statement by the Cabinet Mission.

²Indian Independence Act, 1947, (10 & 11 Geo. 6. Ch. 30).

central legislatures.

Thus the federal scheme of the 1935 Act provided the basic framework for the constitution of India until 1950 when the Constituent Assembly had completed its work. The federal features of the 1935 Act were virtually unchanged, the only major modifications being the removal of the special powers and responsibilities of the Governor-General and the Governors, thus converting them into purely constitutional heads of their respective governments.¹

The deliberations of the Indian Constituent Assembly lasted from December 1946 to December 1949.² At its early sessions, when there was still some possibility of Muslim co-operation, the Assembly favoured assigning considerable power, including residuary power to the autonomous units.³ After the decision to partition the country, the Union Powers Committee presented a revised report which, although it rejected a unitary constitution as "a retrograde step", concluded, in view of the threat of insecurity and disintegration, that "the soundest framework for

¹ Ibid., s. 8(2)(c). The Governor's emergency powers under s.93 of the 1935 Act were also omitted from the interim constitution as a result of this provision.

² See Constituent Assembly of India, Debates, Volumes I - XII, and Reports of Committees, Series I - III.

³ 'The Resolution on Aims and Objects', C.A.I., Debates, Vol. 1, p.57; Report of the Union Powers Committee, 17 April 1947, C.A.I. Debates, Vol. III, No. 1, App. 13, pp. 375-378, or C.A.I., Reports of Committees (First Series) 1947, pp. 1-5.

our constitution is a federation with a strong centre."¹ It went on to suggest a scheme clearly modelled on the Government of India Act of 1935. After the Assembly had considered the general outlines of the future federal structure, as recommended by the Union Powers, Union Constitution, and Provincial Constitution Committees, a Drafting Committee chaired by Dr. B.K. Ambedkar prepared a Draft Constitution which was the subject of extensive discussion in the country and in the Assembly. Although the debates in the Assembly were characterized by considerable differences among delegates over the division of powers between the central and state governments, the well-organized leadership of the Congress Party defeated the major efforts to amend the draft and it was adopted substantially intact, becoming operative January 26, 1950.

A major task which faced the new Dominion of India in 1947 was the integration of the Indian States which had hitherto been ruled by Britain only indirectly.² The Indian Independence Act terminated the paramountcy of the Crown over the States and left them legally independent of both India and Pakistan. But since, without the co-operation of the States scattered amongst the Indian Provinces, India could not achieve political stability or full economic development, there was a pressing need to

¹Second Report of Union Powers Committee, 5 July 1947, C.A.I. Reports of Committees (First Series) 1947, pp. 70-1.

²On the integration of the Indian States see especially: Government of India, White Paper on Indian States (rev. ed. 1950); V.P. Menon, The Integration of the Indian States (Calcutta, 1956).

bring the states into an organic unity with the new Dominion. A States Department under Sardar Patel was formed and between 1947 and 1950 he transformed the map of India.

The first need was to fill the void caused by the lapse of British Paramountcy over the States, and therefore the Rulers were urged to sign Instruments of Accession transferring to the Government of India control over defence, external affairs and communications, but otherwise leaving the States autonomous. As a result of a combination of persuasion, cajolery, bribery and the lack of sufficient military power on the part of the Princes to enforce their claim to independence the accession of all but Junagadh, Hyderabad, Kashmir and those acceding to Pakistan, was achieved prior to the formal transfer of power on August 15, 1947.

During the next three years, the integration of the states into viable units, the democratization and modernization of their administrations, and their subordination to the central government constitutionally and financially were carried out simultaneously. The creation of viable units comparable with the Provinces in size and resources was achieved (1) by merging 216 of the smaller states with adjacent Provinces of former British India, (2) by consolidating 61 states into 7 centrally administered areas, and (3) by integrating 275 states into 5 States Unions which, with the only 3 states to retain their original form, Mysore, Hyderabad and Kashmir, became the 8 'Part B' states under the 1950 constitution. Democratization took the form of a transfer of power to the people of the states wherever

possible and the pensioning off of the Rulers. In the process of consolidating states into the new States Unions, new instruments of accession were negotiated extending the jurisdiction of the central government to all subjects on the federal and concurrent lists of the Government of India Act, 1935, and financial agreements based on the recommendations of the States Finances Enquiry Committee completed the task of making the States and Provinces equal in their rights and obligations.

Special difficulties arose in the integration of Junagadh and Hyderabad, but as a result of the intervention of the Indian Army, the former was eventually merged in the Saurashtra States Union and the latter acceded to the Indian Union and adopted its constitution as a state of India. The accession to India of the Hindu Maharaja of Kashmir with a predominantly Muslim population was followed by a military struggle with Pakistan which ended with the ceasefire of January, 1949. As a result, although Kashmir was listed in the 1950 Constitution as a 'Part B' state, it retained a special limited relation to central authority.¹ In 1954 the Constituent Assembly of Kashmir declared that the accession of the state to the Indian Union was final and irrevocable and the state constitution adopted late in 1956 stated that "the State of Jammu and Kashmir is and shall be an integral part of India" thus taking one stage

¹The Constitution of India, 1950, art. 370; The Constitution (Application to Jammu and Kashmir) Order, 1950.

further the integration of the State into the Union.¹

The Indian constitution of 1950 consisting of 395 articles and 8 schedules is probably the longest constitutional document in the world. The great variety of regional and social differences, the relative inexperience in self-government, and the need to provide for emergencies, induced the framers of the constitution to make the constitution explicit on matters of detail. The federal features of the new constitution follow closely, indeed might be described as an adaptation of, those of the Government of India Act of 1935.

The Indian Union exhibits the usual major features of a federation: a dual polity, a distribution of powers between the national and state governments, a written constitution and a supreme court. The salient federal features of the constitution are: the existence, until their reorganization in 1956, of four categories of states and territories, each group with a different status and relationship to the central government; the enumeration of Union, State and Concurrent powers in three exhaustive lists, with the resulting limited residuary power vested in the central government; a detailed definition of legislative, administrative and financial relations between the national and state governments, with an emphasis on the interrelation of the two levels of government and provisions for flexibility and adaptability; the assignment of different

¹ Constitution of Jammu and Kashmir, 1956, article 3.

degrees of rigidity to different parts of the constitution, most parts requiring a special majority vote in the central parliament and some of the federal features requiring the ratification of the Parts A and B states; the assignment to the Supreme Court of the role of interpreter of the constitution; the creation of a bicameral central legislature but without equal representation for the states in the indirectly elected second chamber; the establishment of responsible parliamentary executives in the central and state governments; the inclusion of a list of fundamental rights and a set of directive principles. The framers of the constitution were particularly concerned about the strength of the disintegrating and disruptive tendencies and therefore aimed at a strong central government. As a result, wide powers were given to the central government in the extensive federal and concurrent lists, in the implementation of treaties, in certain controls over administration in the states, in the levying of taxes, in controls over public borrowing, and in the power to create new states or alter state boundaries.¹ In addition the Supreme Court and state High Courts were integrated into a single judiciary, a common All-India Civil Service for important posts in both Union and State governments was created, and a singular uniform citizenship for the whole of India was stipulated. The name itself, "the Indian Union" was

¹Constitution, Seventh Schedule, Lists I, III; arts. 253; 256-8; 268-281, 292-3; 3.

deliberately chosen to emphasize the "indestructible" character of the new republic.¹ In emergencies even more sweeping powers were given to the central government to exercise over-riding legislative and executive authority. Indeed, the scheme was designed to work as a federal system in normal times but to be convertible to a unitary system in cases of war or other emergencies.²

In the post-independence period, the most serious centrifugal tendency has been the popular demand for the reorganization of states on a linguistic basis.³ The movement for linguistic states existed long before independence, but was obscured by the strength of Hindu-Muslim communal antagonism. It arose from the fact that the provincial boundaries in British India were mainly the result of historical accident and administrative convenience, bearing little correspondence to the distribution of the major linguistic groups. As early as 1920, the Congress had accepted the linguistic redistribution of provinces as a clear objective and had adopted the principle for the purposes of its own organization. With the new responsibilities after independence, the Congress leadership, fearing that linguistic

¹Ambedkar, C.A.I., Debates, Vol. VII, p. 43.

²Ambedkar, C.A.I., Debates, Vol. VII, pp. 34-5.

³On the reorganization of the states see especially: Report of the States Reorganization Commission, 1955 (New Delhi, 1955); J. Bondurant, Regionalism versus Provincialism (Berkeley, 1958); S.S. Harrison, India, The Most Dangerous Decades (Princeton, 1960); C.H. Alexandrowicz, Constitutional Developments in India (London, 1957), pp. 171-193.

divisions might have a disintegrating effect on the fragile Union, steadily resisted the application of the linguistic principle. In this they were supported by the Dar Commission Report, 1948, and the J.V.P. Committee Report, 1949, which emphasized the initial priority of unity and economic development.¹ As a result the state boundaries recognized in the constitution of 1950 were based on those inherited from the British administration and on the results of the hasty integration of the princes' states for purposes of administrative convenience.

But in spite of the decisions of the Constituent Assembly, the movement for linguistic states gained ground after 1950. With the completion of the integration of the princes' states and the decline of Hindu-Muslim tension due to partition, attention internally became focussed upon linguistic tensions within the multi-lingual states, and, due to the choice of Hindi as the national language, upon the fears of the non-Hindi south of northern domination. The skilful exploitation in the 1952 elections by the Communists of the Telegu demand for an Andhra State and the fast unto death of Shri Potti Sriramulu over the issue, led Nehru to surrender and agree in 1952 to the formation of a linguistic Andhra State. This led inevitably to the demand for a wider consideration of a general reorganization of state boundaries and a commission to examine the question was appointed in

¹Report of the Linguistic Provinces Commission (1948), in C.A.I., Reports of Committees (Third Series), pp. 180-239; Indian National Congress, Report of the Linguistic Provinces Committee (New Delhi, 1949), (called JVP after the initials of its 3 members Jawaharlal Nehru, Vallabhbhai Patel, and Pattabhi Sitaramayya).

1953. The States Reorganization Commission reporting in 1955 recommended a redrawing of state boundaries along lines more or less in keeping with many of the linguistically based demands, although other considerations were also taken into account.¹ Negotiations between the central government, state governments and communities concerned led to modifications to the commission's proposals, and the modified plan following linguistic boundaries even closer was enacted in 1956.² As a result there was a substantial simplification and reduction in the number of constituent units in the federation: the existing 29 states and territories in four categories becoming 14 states of equal status and 5 centrally administered territories.³ The desire of the Congress leaders to counteract the centrifugal forces inherent in the movement for linguistic states, led them to establish at the same time five interstate zonal councils, the zones representing economic regions. The councils, composed of ministers and other representatives from the groups of contiguous states, meeting under the chairmanship of the central government Home Minister, are advisory in function and mainly concerned with securing better economic co-ordination within each zone.⁴

¹ Report of the States Reorganization Commission 1955, (New Delhi, 1955), Part II.

² The States Reorganization Act 1956 (37/1956) and the Constitution (Seventh) Amendment Act 1956.

³ One of the 14 states, Jammu and Kashmir, still retained, however, a special status of its own under article 370 of the constitution and The Constitution (Application to Jammu and Kashmir) Order, 1954 (C.O. 48).

⁴ States Reorganization Act 1955, Part III.

The councils have also considered such regional problems as border disputes, official state and national languages, food distribution, and police reserves. Indeed, the Southern Zonal Council, the most effective of the five councils, has achieved some notable successes in handling the educational problems of linguistic minorities.

The reorganization of 1956 left as multi-lingual states Bombay, Punjab, and Assam and in each of these the issue of linguistic provincialism remained alive. Subsequently, under continued pressure, the experiment of a bilingual state in Bombay was abandoned in 1960, when it was divided into the two basically unilingual states of Gujarat and Maharashtra, the creation of a separate Naga state was set in motion in 1962, and in 1966 the Congress leadership conceded the principle of the partition of Punjab state.

The reorganization of states did not exhaust the importance of language as a political issue in India. The reorganization of states provided political bases for the major regional languages, but the question of the choice of an All-India language was also a source of controversy. The Constitution in 1950 distinguished between fourteen specified "languages of India" and the "official language" for all-India purposes. The choice of the latter provoked one of the most bitter debates in the Constituent Assembly. The choice was between Hindi, the language spoken by the largest number of Indians (42 percent) but not of a majority,¹ and English spoken in all parts

¹

See Appendix 2, table 4.

of India but only by the educated elite representing slightly over one percent of the total population. The opposition to Hindi came most strongly from the non-Hindi areas and particularly the Dravidian language groups of South India who felt they would be placed at a disadvantage. On the other hand to select English was to place a barrier between the educated elite and the masses and furthermore to retain a vestige of colonialism. The compromise arrived at in the Constituent Assembly and embodied in the Constitution was the choice of Hindi as the "official language" for all-India purposes together with the continued use of English over a transitional period of 15 years. When the Official Language Commission of 1956¹ (provided for in the Constitution) reported in favour of proceeding with the replacement of English by Hindi, the issue once more became a centre of fierce controversy as the long-smouldering fears of the non-Hindi speakers burst forth. In 1958, as required by the Constitution, a special committee of parliament reviewed the commission's report and endorsed the commission's views but expressed concern over too hurried a switch to Hindi.² The threat at the Congress Party annual session in 1958 of a split within the party led finally to a compromise solution whereby, in order to satisfy the Hindi enthusiasts, Hindi would still "formally" become the "official

¹Report of the Official Language Commission, 1956 (New Delhi, 1957).

²Report of the Committee of Parliament on the Official Language (New Delhi, 1958).

language" in 1965, but, in order to placate the non-Hindi areas, English would remain for an indefinite period as an associate official language. Nevertheless, the issue remained very much alive. Although a Presidential Order in 1960 made official the retreat from strict switch-over in 1965, the counter-persuasions of the Hindi advocates and the pressure of the Chinese war induced the Union Government to postpone the legal enactment of the associate status of English. When at last in April 1963 the Official Language Bill was introduced, the Indian Parliament witnessed some of the rowdiest scenes in its history. Following a lengthy debate and amendments stipulating that the state governments should be consulted when the issue is reviewed in 1975, the bill was finally passed establishing as the practical fact in India two official languages.

The operation of the Indian federal system since 1950 has shown the simultaneous development of strong centralizing and decentralizing tendencies. On the one hand, the dedication to economic and social planning, the predominance of the Congress Party and Nehru's leadership, the willingness to invoke its emergency powers and the military threats of China and Pakistan have strengthened the authority of the central government. On the other hand, the central government has been dependent upon the states for a large part of its administration and the strength of regional linguistic feeling has been strong enough to force a nation-wide reorganization of state boundaries and a postponement of the imposition of a single common official language. Furthermore, within the Congress Party itself there

has been a notable shift in the balance of power, apparent in the growing influence of state leaders in the making of major decisions. The effect of these two conflicting and highly dynamic forces of integration and regionalism has been to intensify the federal aspects of the constitution during the first fifteen years of its operation.

2. The Republic of Pakistan

It was the events of 1937-1947, revealing to the Muslims that the end of British rule could not be long delayed and that it might be followed by a Hindu raj able to claim the sanction of an electoral majority, that turned the Indian Muslims to a separate Pakistan as a practical objective. The Muslim League had already been in existence since 1906, and the idea of a separate Muslim state had been suggested by Muhammad Iqbal in 1930, but it was not until 1940, at its Lahore meeting that the League adopted the "Pakistan Resolution", declaring officially for the first time the goal of a separate Muslim state. The League converted itself into an agency with mass influence and the subsequent history of the movement has been described as:

"one of increasing momentum toward a single fixed goal. Unity was made easier to preserve since fear spurred from behind and a glorious vision beckoned from ahead. No other loyalty to person or principle was allowed to stand in the way of Pakistan".¹

When in the post-war elections the League carried almost all the provincial Muslim seats except the North-West Frontier Province and took every Muslim seat in the central assembly, its claim to speak for the large majority of Muslims could no longer be denied. The subsequent failure of the Cabinet Mission in 1946 to provide a stable compromise between the Indian National Congress and the Muslim League made it clear that partition was the only solution.

¹K. Callard, Pakistan, A Political Study, (London, 1957), p.13.

The new state of Pakistan which came into existence August 15, 1947, presented its leaders with an almost impossible task in trying to make it work. It was perhaps unique in consisting of two large fragments severed from the structure of old India and separated by 1,000 miles of hostile territory. Moreover, Pakistan was born in chaos for partition was marked by widespread riots, massacres, looting and arson. Unlike India, which inherited all the major centres of government and commerce, in Pakistan a whole structure of government had to be improvised and the economic structure completely rebuilt. To all these difficulties was added the severe internal economic burden caused by the flood of refugees and the external danger of hostilities with India, particularly over Kashmir.

The Indian Independence Act 1947, provided that the Government of India Act 1935, should become, with certain adaptations, the working interim constitution of Pakistan until the Constituent Assembly had provided a new constitution.¹ Originally this arrangement was expected to last only a few years, but in fact the government of Pakistan was carried on under this interim constitution for nearly a decade, until March 1946. Thus from the beginning, Pakistan was established constitutionally as 'The Federation of Pakistan'.²

¹ Indian Independence Act 1947, (10 & 11 Geo. 6. Ch. 30), s. 8.

² On the interim federal constitution and its operation see especially: Government of India Act 1935 (26 Geo. 5. Ch. 2); Indian Independence Act 1947 (10 & 11 Geo. 6. Ch. 30); Pakistan (Provisional Constitution) Order 1947 (G.G.O. 22/1947); K. Callard, Pakistan, A Political Study, (1957) pp. 101-118, 155-193.

As originally established Pakistan consisted of a complex array of units. In the east wing there was the single province of East Bengal with 55.4% of the total Pakistani population. In the west wing there were three Governor's Provinces, West Punjab, Sind and North-West Frontier Province, together constituting three-quarters of the population in western Pakistan, and one Chief Commissioner's Province, two acceded princes' states, and eight further acceded states grouped into the Baluchistan States Union and the North-West Frontier Agencies.¹ The ceasefire line ending the hostilities with India over Kashmir, left the main centres of population in Indian hands, but a narrow thinly populated strip in the north-west was retained by Pakistan, being known as Azad Kashmir. The system of government in the different components of Pakistan at the time of its formation ranged from complete autocracy in some of the princely states to full representative government in the Governor's Provinces.

Under the interim constitution, the indirectly elected Constituent Assembly, a body of never more than 80 members, acted also as the unicameral central legislature of the new Dominion. Due to the original expectation that its duration would be short, there was no ban on membership in two legislatures, and therefore the central assembly included provincial and state ministers among its members. Although the

¹The federal capital, Karachi, was detached from Sind and placed under an Administrator. In 1952 it became a Chief Commissioner's Province.

Indian Independence Act 1947 terminated the special discretionary powers of the Governor-General, Jinnah as the first Governor-General, with his authority as Quaid-i-Azam, the founder of the state, towered over all other political leaders and ministers who willingly served as his lieutenants. With Jinnah's death in 1948, the political situation came more closely to resemble cabinet government, when Liaquat Ali Khan, clearly the leading statesman of the country, chose to remain Prime Minister, but following his death in 1951 the succeeding Governor-Generals regained the initiative.

The distribution of powers between the central and unit governments was determined in the case of the acceding states by the instruments of accession and in the case of the provinces by the three lists of federal, provincial and concurrent powers in the Government of India Act 1935. The extensive federal and concurrent legislative lists gave the central government widespread authority and the provisions regarding administrative relations with the provincial governments were heavily weighted in its favour. Moreover, during the period the interim constitution was in operation, the central assembly freely used its exclusive power of constitutional amendment to add to its legislative powers. The original scheme of the 1935 Act gave the major sources of revenue to the central government, but provided that the whole or part of the proceeds of central taxes should be shared with the provincial governments. After the establishment of Pakistan, central

requirements for funds were so great, particularly in the field of defence, that the original distribution was changed further in favour of the central government.¹ In 1952, in view of the improved position of the central government with its surplus and the financial hardships of the provinces, it was decided, following Sir Jeremy Raisman's enquiry into the question, to revert to a position more closely resembling the original scheme of Government of India Act 1935.²

Although the interim constitution possessed the usual features of a federal constitution, - central and regional governments, the division of powers in a written constitution, and a Federal Court to interpret the constitution - in many respects the central government was in a position to dominate the provincial governments. The central government not only possessed emergency powers in cases of threats to security,³ but its emergency powers to take over provincial administration if the normal constitutional machinery broke down was

1

The sharing of the net proceeds of the income tax was abandoned at the establishment of Pakistan; the administration of sales tax was taken over by the central government (although a proportion of receipts was transferred to the provinces and states); the right to levy succession and estate duties was appropriated by the central government.

2

Report of the Financial Enquiry Regarding Allocation of Revenue between the Central & Provincial Governments, Karachi (1952).

3

Government of India Act 1935, s.102. This section was successively amended in 1947, 1948, and 1950 to enlarge its scope, particularly to meet the situation caused by the movement of population after partition.

re-inserted and exercised on a number of occasions.¹ The central legislature, in its capacity as Constituent Assembly, was in a position to amend the interim constitution by a simple majority and this power was frequently used, thus leaving provincial governments at its mercy.² The central power to appoint and dismiss provincial governors was used as a source of central control over provincial governments, through the prerogative power of a Governor to depose a cabinet. PRODA, which gave the Governor-General or Governors discretionary power to refer to the courts charges of misconduct in public office, was intended as a weapon against corruption but served also as a political weapon against provincial ministers.³

Until its decline in 1954, the party organization of the Muslim

1

The original s.93 of the 1935 Act giving the central government this power was removed by the Pakistan Provisional Constitution Order 1947 (G.G.O. 22/1947). But a new s.92A was inserted by Jinnah, acting under his extraordinary powers (Indian Independence Act 1947, s.9), restoring similar powers to the central government (G.G.O. 13/1948). These powers remained in force until a modified version was inserted as s.93 by the Government of India (Amendment) Act, 1955. The central government exercised these powers in Punjab 1949 - 1951, Sind 1951-3, E. Bengal, March 1954, E. Bengal 1954-5.

2

Indian Independence Act 1947, s.8(1). Between March 1948 and September 1954 the first Constituent Assembly made 44 amendments to the interim constitution.

3

The Public and Representative Offices (Disqualification) Act 1949, repealed in 1954, was usually called PRODA.

League, whereby the central offices closely supervised the provincial branches, provide a form of central control over provincial governments. Following the arrangements existing before 1947, Pakistan also retained, within a nominally federal structure, a single higher civil service and a higher police service common to all levels of government, but with recruitment and the general pattern of these services being under central control. Thus, while the interim constitution retained the federal form, these central powers and their frequent use made its operation far removed from the traditional definition of the federal principle.

The concentration of power in Karachi and its neglect of East Bengal in favour of the western provinces became a source of growing East Bengali resentment. The result was that in the 1954 provincial elections, a United Front held together by a common desire for autonomy for East Bengal and a shared determination to defeat the League virtually annihilated the Muslim League in that province.¹ Although the central government tried to cope with this situation by suspending the provincial government for a period, from this time on, Bengali demands for greater provincial autonomy were to prove a major element in Pakistani politics.

1

The Muslim League secured only 10 of the 309 seats at stake.

The task of reaching agreement on a permanent constitution proved to be a protracted one.¹ Although the Constituent Assembly agreed in 1949 in its Objectives Resolution on Aims and Objects that Pakistan should be "a Federation wherein the units will be autonomous",² the interim report of its Basic Principles Committee in 1950 caused such a storm of criticism in East Bengal that its consideration was postponed. When the committee presented its revised report in 1952 it had an equally unfavourable reception, this time led by the Punjabis, with the result that its consideration was again deferred. In 1954 the report of the committee with further modifications was finally passed by the Assembly. Just at this point, however, when the Assembly, expecting to be presented with the finished product of the Drafting Committee at its next meeting, seemed to be on the verge of completing its work, the Constituent Assembly was dismissed by the Governor-General on the grounds that it had lost the confidence of the people.

Four major issues were the sources of controversy and delay in constitution-making during the life of the first Constituent Assembly. A crucial issue was that of provincial representation in the central legislature. The problem arose

¹On the deliberations of the first Constituent Assembly see especially: Constituent Assembly of Pakistan, Debates; C.A.P. Basic Principles Committee, Interim Report, 28 Sept. 1950, Report 27 December 1952, Report as adopted 21 September 1954.

²Constituent Assembly Debates, Vol. 5, No. 1, p. 1.

because East Bengal, possessing a population of more than all the other provinces combined, felt entitled to representation according to population, while the other provinces feared that this would result in perpetual domination by East Bengal. Different bicameral schemes were advanced successively in each of the reports of the Basic Principles Committee in an attempt to find an acceptable compromise, culminating in the 'Mohammed Ali Formula' giving the two wings of Pakistan parity at joint sittings. There was also considerable controversy over the degree of centralization. While the Basic Principles Committee and the Constituent Assembly favoured giving the central government strong powers on the model of the Government of India Act 1935, this provoked a strong reaction in East Bengal, where neglect by the central government under the interim constitution and remoteness from Karachi, resulted in the overwhelming success of the United Front demanding provincial autonomy in the 1954 elections. The national language issue was also a source of dispute. While Bengali was spoken by 54.6% of the population, the national leaders insisted that Urdu, the traditional language of Muslim India and widely understood in West Pakistan, should be the single national language as a focus for unity, thus adding to the Bengali sense of grievance. After the 1954 elections, the demand for Bengali as a second national language could no longer be ignored and the Assembly

reached a compromise recognizing both Urdu and Bengali.¹ Finally, although there was fairly general agreement that Pakistan should be based on Islamic principles, differences developed between the westernized political leaders, who thought in terms of Islamic principles applied to modern democratic institutions, and the ulama, the professional men of religion, who wished to reproduce the institutions of the early caliphate.

As a result of the judgments of the Federal Court, ruling upon the Governor-General's dismissal of the first Constituent Assembly, a second Assembly was set up in 1955. Before turning to constitution-making it performed two other major tasks.² The first 49 sittings of the new Assembly were devoted to the revalidation of those statutes which became null and void as a result of the legal disputes that followed the dissolution of the first Assembly. Its second task was the unification of West Pakistan. Under the interim constitution, West Pakistan, with a population less than that of East Bengal, had consisted of a complex array of units. Although there had been some suggestions of the advantages of administrative rationalization by the unification of West Pakistan into a single unit, these proposals had not been taken seriously during the life of the

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The Constituent Assembly's compromise consisted in the recognition of both Urdu and Bengali, but with an expression of hope that the State would take measures for developing a common language.

2

On the work of the second Constituent Assembly see especially Constituent Assembly of Pakistan, Debates, Vol. 1, (1955-6).

first Assembly, because of the cultural and linguistic differences within the area. After the dismissal of the Constituent Assembly, the central government, intent on providing a counterbalance to diminish the power of the single large eastern province, announced its decision to merge West Pakistan into a single province. When the attempt to do this by executive decrees was frustrated by the Federal Court, the government insisted that the second Constituent Assembly pass its proposals before turning to constitution-making. After heated and bitter debate the Establishment of West Pakistan Act, 1955, was passed, merging the former western provinces and states into a single province, resulting in "an unusual federal system, with only two provinces balancing each other in a state of precarious equilibrium".¹ Controversy over the unification of West Pakistan did not end with the 1955 Act of unification. Various groups advocated the redivision of the province and in 1957 the West Pakistan Assembly actually passed a bill recommending the dissolution of the single western unit. The central government, however, refused to act on this recommendation.

Once West Pakistan was unified, the second Constituent Assembly turned to constructing the constitution and by the end of February 1956 had completed this task. Its proposals bore a close resemblance to those adopted by the first Constituent Assembly before its dismissal, except that Pakistan

¹Callard, Pakistan, A Political Study, p. 193.

now was a federation composed of two provinces, provincial powers were slightly increased, and a simpler unicameral legislature replaced the complicated bicameral scheme approved in 1954.

The greater part of the new constitution consisted of provisions similar to those of the interim constitution; indeed many terms and even clauses were carried over.¹ There were, of course, some modifications, some as a result of experience since partition and some modelled on the features introduced in the Indian constitution. In the constitution, which went into effect March 23, 1956, the central government still retained wide legislative powers, but provincial powers were enhanced by additions to the provincial list and by the assignment of residual powers.² Specific constitutional provision was now made for a number of inter-governmental institutions, including the National Finance Commission and the National Economic Council composed of central and provincial government representatives.³ To central emergency powers existing previously were also added special central powers in cases of financial emergency. A rigid amendment process

¹Constitution of the Islamic Republic of Pakistan, 1956.

²Constitution of the Islamic Republic of Pakistan, 1956, Fifth Schedule, Provincial List now included 94 items as compared with 55 in the Government of India Act, Seventh Schedule, List II (as amended to 1956). Article 109 assigned residuary legislative power to the provinces.

³Constitution, 1956, arts. 118, 199.

was adopted, most provisions requiring a special majority in the central legislature, and some requiring ratification by the provinces affected. The central legislature continued to be unicameral but was to be increased in size from 80 to 310 members who were now to be directly elected. However, until elections could take place the Constituent Assembly was to continue as the central legislature. Although the question of communal electorates was left open in the constitution, it was soon decided to abandon separate electorates. The principle of cabinet responsibility to the legislature was now specifically stated and the Governor-General was replaced by an elected President. Lists of fundamental rights and directive principles were included, and in addition the constitution was given an Islamic flavour.¹

Although the constitution expressly stated that "Pakistan shall be a Federal Republic",² and there was a greater decentralization in the division of powers than under the interim constitution, the central government continued to possess some of its previous powers enabling it to dominate the provincial governments. In addition to extensive legislative and financial predominance, it retained emergency powers enabling it to suspend the federal character of the constitution.³

¹Arts. 25, 197, 198.

²Arts. 1(1).

³Arts. 191-196.

The power to appoint governors continued to be used as a means for controlling and influencing provincial governments. The executive powers to give directions to provinces on certain matters,¹ control over the joint All-Pakistan Services common to the central and provincial government,² and the power of refusing assent to some classes of provincial legislation remained.³ These represented departures from the traditional interpretation of the federal principle, and to such a degree that Callard was forced to conclude that "Pakistan is not in reality a federal state".⁴

The adoption of the constitution did not result in any lessening of the political strife and instability which had characterized government under the interim constitution.⁵ This instability was chiefly due to the lack of any majority party after the disintegration of the Muslim League. The party manoeuvrings, making voting support in the National Assembly uncertain, enabled President Mirza to retain substantial authority and influence both in politics and the admin-

¹ Arts. 125-128, 104.

² Art. 183.

³ Arts. 110(2), 119.

⁴ K. Callard, "Pakistan", G. McT. Kahin (ed.) Major Governments of Asia (Ithaca, N.Y., 1958), p. 417.

⁵ From March 1956 to October 1958 there were 4 central Prime Ministers, 3 West Pakistan Chief Ministers, and 6 East Pakistan ministries.

istration during this period.

In October 1958, with the country's economic condition rapidly deteriorating, bureaucratic corruption and black marketing and profiteering becoming rampant, instability in governments at both central and provincial levels chronic, growing defiance of central authority, and the prospect of politics in East Pakistan turning to radical extremes, the army leaders decided that the existing constitutional machinery was not capable of working in Pakistan. At the request of the army, President Mirza issued a proclamation declaring:

"The Constitution which was brought into being on March 23, 1956, after so many tribulations is unworkable. It is so full of dangerous compromises that Pakistan will soon disintegrate internally if the inherent malaise is not removed."¹

Under the proclamation the constitution was abrogated, the central and provincial governments dismissed, the national and provincial assemblies dissolved, all political parties dissolved, and martial law proclaimed throughout the country, effective power passing to the army under the leadership of Ayub Khan, the Commander-in-Chief, who was appointed Chief Martial Law Administrator. The army met little opposition in establishing itself in power, even the courts being quick to grant their approval. Within three weeks General Ayub had ousted Mirza and assumed the office of President while continuing to act as his own Prime Minister. Although, for purposes of administration Pakistan was divided into three areas, East Pakistan,

¹

President's Proclamation, October 7, 1958.

West Pakistan and Karachi, the structure of government became highly centralized, the powers of ministers and martial law administrators being derived from the President in whose name the administration of the entire country was run.

Soon after taking over power, President Ayub had announced that when the initial vital problems had been met, the government would turn to the question of a suitable constitution. He expressed a preference for a Presidential system because of its stability and for strong central government as "a natural reaction to the separatist tendencies to which the federal principle had given rise".¹ During 1959 a system of "basic democracies" was instituted. This consisted of a pyramid of four tiers of councils within each province, each council consisting partly of elected and partly of nominated or official members. The elected members of the higher councils were indirectly elected by the lower councils. The mixture of indirectly elected and appointed members on these councils clearly aimed at a controlled democracy. In February 1960 a Constitutional Commission was set up to examine the reasons for the failure of the 1956 constitution and to submit proposals for a new national constitution suitable to the particular conditions of Pakistan and aiming particularly at "the consolidation of national unity; and a firm and stable system of government".² Thirteen years after independence Pakistan was still seeking a per-

¹M. Ahmad, Government and Politics in Pakistan (Karachi, 1959), p. 233. See also Mohammad Ayub Khan, "Pakistan Perspective", Foreign Affairs, Vol. 38, No. 4, July 1960, pp. 547-556.

²M. Ayub Khan, Op.cit., p. 553.

manent solution to the need for a constitution that would unite its diverse elements.

In 1962 a new national Constitution was put into force. This Constitution expressly set out to establish "a form of federation with the Provinces enjoying such autonomy as is consistent with the unity and interest of Pakistan as a whole."¹ One radical development under this new Constitution was the separation of the executive from the legislature and the assertion of the primacy of the former. The 1961 Constitution Commission had recommended a federal system similar to that which had existed before 1958,² but the new Constitution, as eventually promulgated, differed from that of 1956 in significant ways. There was a greater devolution of legislative and executive authority, and, in practice, of revenues, assigned to the provinces, but at the same time central controls over the provincial governments were increased. The governors, now active rather than nominal heads of the provincial executives, are appointed and dismissed by the President and subject to his directions. Conflicts between a provincial governor and his legislative assembly are resolved by reference to the National Assembly. Moreover, the National Assembly may, if it is in the "national interest of Pakistan in relation to (a) the security of Pakistan, including the economic and financial stability of Pakistan; (b) planning or co-ordination;

¹The Constitution of the Republic of Pakistan, 1962, preamble.

²Report of the Constitution Commission, 1961 (Karachi, 1962), ch. 4.

or (c) the achievement of uniformity in respect of any matter", legislate within the normally provincial fields.¹ Despite, or rather because of, these unitary tendencies, separatism has remained a potent force in East Pakistan. Although the Bengalis have wrung some major economic and financial concessions from the central government, there is still considerable resentment at the continued dominance of the western wing in their political and economic life. Progress has been made, but the consolidation of unity within Pakistan still remains an immense task.

¹Constitution, 1962, art. 131(2).

3. The Federations of Malaya and Malaysia

In the fifteenth century the Malacca Empire established political control over most of the Malayan peninsula and large areas of Sumatra. The next three centuries, however, saw the slow and sporadic disintegration of this empire as the Portuguese and Dutch successively captured Malacca itself, but failed to effect direct control over the rest of the peninsula.

The history of the British connection with Malaya began with the establishment of three British trading settlements, Penang, Singapore and Malacca, the latter being finally ceded by the Dutch in 1824. In 1867 the settlements were severed from the administration of India and transferred to the Colonial Office as a Crown Colony. These settlements served both as strategically important naval bases commanding the Strait of Malacca and the shipping lanes to the Orient and as primary bases for commercial expansion and development of the hinterland. As the inland areas developed commercially the settlements became their natural maritime outlets, Singapore quickly becoming the greatest entrepot port in South-east Asia.

Initially, the East India Company and after it the Colonial Office were interested primarily in trade, and it was their policy not to undertake conquest or interference in the affairs of the native states if this was avoidable. However, after 1873, because of the semi-anarchy and chronic misrule in the states, the British government, largely in response to the demands by trading groups in the settlements, reversed its policy. The result was treaties between 1874 and 1889

with Perak, Selangor, Pahang and Negri Sembilan, whereby the rulers of these states received British protection in exchange for British Residents whose advice was to be accepted in all matters except those concerning Malay custom and the Mohammadan religion. Although the Colonial Office insisted that the Residents were to act only as advisers, they quickly became the de facto wielders of power.

The desirability of greater administrative uniformity and the demands of commercial, mining and agricultural interests for integrated transportation and communications facilities, led Sir Frank Swettenham to persuade the rulers to form a nominal federation of the 4 states, known as the Federated Malay States in 1895.¹ As a result, by 1909 virtually all the executive power formerly exercised by the Residents in the states had been centralized in the hands of a Federal Secretariat under the British Resident-General.

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Sir Frank A. Swettenham, British Malaya (London, 3rd ed., 1948), ch. 12; F.M.S., Treaty of Federation, 1895, in Cmd. 4276/1933, Report on a Visit to Malaya (Wilson), Appendix III. On a strict interpretation of the Treaty, the term "Federation" was a "misnomer" (see Cmd. 4276/1933, p.6). The Treaty neither established a central government nor attempted a division of powers, beyond stating that the Rulers agreed to accept a Resident-General whose advice they would follow in all matters of administration other than those touching the Mohammedan religion (F.M.S., Treaty of Federation, 1895, article 4). On the contrary, it preserved all the former powers of the Rulers in their states (Ibid, concluding clause). In practice, however, the Treaty did "effect substantial changes" as power became concentrated in the Federal Secretariat under the Resident-General (Cmd. 4276/1933, p.6).

Throughout its history 1895-1941, the Federated Malay States was troubled by controversy over the degree of centralization desirable. This problem was focused on three issues: (1) the conflict of interests between alien capitalism favouring centralized administration as an aid to commercial development, and the state governments representing, and intent on preserving, Malay authority and prestige; (2) the rivalry between the High Commissioner, normally resident in Singapore, and his deputy in the F.M.S., the Resident-General and later the Chief Secretary, over the concentration of power in the hands of the deputy; (3) and the desire to encourage the unfederated Malay States, also under British protection, to join the federation, but the reluctance of their Rulers to do so because of the sweeping powers of the Resident-General. As a result, British policy in the F.M.S. vacillated between centralization and decentralization. Until 1932 the general trend was to greater centralization in spite of efforts in 1909 and 1927 to reduce the concentration of power in the central bureaucracy.¹ Following intense controversy over the issue in the early 1930's, the Colonial Office adopted proposals to achieve a considerable measure of decentralization, involving the

¹Cmd. 4276/1933, pp. 7-10 and App. IV. In 1909 a Federal Council was created as the main legislative and financial authority, the Resident-General reduced in status to a Chief Secretary, and an attempt made at a division of powers; in 1927 the states were given greater financial autonomy and the Federal Council was reconstituted to restore the prestige of the Rulers.

transfer of certain departments to the states, the abolition of the Chief Secretaryship, and reduction in the authority of department heads. The result was the display of new initiative in the state governments, freed from the stringent control of over-centralized government.

In addition to the Federated Malay States, five other Malay States, Johore, Kelantan, Trengganu, Kedah and Perlis, later came under British protection between 1909 and 1930.¹ Witnessing the effect of the resident system and the federation upon the sovereignty of their colleagues in the F.M.S., the sultans of the unfederated states took considerable pains to maintain their independence. In these states the British officers assigned to each Ruler were styled Advisers rather than Residents and indirect rule was more of a reality. A feature common to these unfederated states was their insistence on independence from any form of inter-Malayan federation and their emphasis on internal self-development.

In December 1941 the Japanese invaded Malaya and quickly overran the whole peninsula and Singapore. The Japanese wrought little change in the administrative structure of the Settlements and the States, although in 1943 the elective principle was introduced to the Malays for the first time. For a while, an attempt was made to combine Malaya and Sumatra

¹ Johore had confided control of its foreign affairs to Britain by a Treaty of 1885, but it was only in 1914 that an Agreement was concluded for the appointment of a British Officer as General Adviser.

under a single administration centred in Singapore, the ethnic, linguistic and economic ties between the peoples of the two areas being stressed, but by 1944 the plan was abandoned. The net effect of the Japanese occupation was a disillusionment with British power, a general stirring of Malay political consciousness, increased communal antipathy because of the unequal treatment of the Malays, Indians and Chinese by the Japanese and the improvement of the Communist Party organization operating through its guerrilla forces.

During the war, the Colonial Office devoted considerable attention to the political future of Malaya after its liberation. Considering the cumbersome nature of pre-war Malayan administration in which there were 10 legislatures in a country scarcely larger than England, the planners decided that "efficiency and democratic progress alike demand therefore that the system of government should be simplified and reformed."¹ The result was a scheme involving a volte-face from the policy of decentralization adopted in 1933. It was decided to create a Malayan Union embracing the nine Malay States and the two British Settlements of Penang and Malacca, only Singapore being left separate as an island colony.

When Malaya was regained in 1945, the Colonial Office proceeded as planned. In a whirlwind tour at the end of 1945, Sir Harold MacMichael secured in secrecy from the nine sultans

¹Cmd. 6724/1946, Malayan Union and Singapore. Statement of Policy on Future Constitution, para. 3.

a transfer of their complete rights of legal sovereignty to the British Crown.¹ Then, without further consultation in Malaya, the British government put into effect its scheme for a Malayan Union, whereby practically all power would be concentrated in a central government, each State would have a State Council with such authority as the Union Legislative Council delegated to it, the Sultans would retain their thrones but with little political power, and Union citizenship would be given to all claiming Malaya as their homeland without discrimination of race and creed.² The result was Malay indignation over MacMichael's blunt methods in compelling the sultans to sign the agreements, the arbitrary imposition of the scheme without consultation of Malay opinion, the deprivation of the rulers' historic legal sovereignty, and most of all the provision for citizenship giving equal rights to Chinese and Indians and thus depriving the native Malays of the privileged status they had previously occupied under British rule. The most effective protest came from the United Malay National Organization which carried on a vigorous agitation, pushing forward the moderate sultans and rousing the hostility of

¹ Col. No. 194/1946, Report on a Mission to Malaya (MacMichael)

² Malayan Union Order in Council, 1946. See also Cmd. 6749/1946, Malayan Union & Singapore. Summary of Proposed Constitutional Arrangements. Of the three Orders in Council planned, i.e. Malayan Union Order, Singapore Order, and Malayan Union Citizenship Order, only the first two were duly made, the latter due to criticisms never being implemented (Cmd. 7171/1947, Fed. of Malaya, Summary of Revised Constitutional Proposals, para. 2).

the peasants against the new policy. The Malay cause was further strengthened by the failure of the Chinese to attempt to defend a policy which was to their advantage. In the face of the Malay opposition and threats of a mass non-co-operation movement, the British government bowed to the storm. It agreed to drop the Union proposals and to consult representative Malay, Chinese and Indian leaders to explore the possibility of a new settlement.

The result of these negotiations was the Federation of Malaya Agreement 1948 which established by agreement of the Rulers of the States and the British Government a federation under the protection of Great Britain.¹ The new federal constitution was in fact almost as unitary as that of the Malayan Union, but Malay support was bought by the British agreement to recognize the political identity of the Malay States, by a highly restrictive citizenship law which excluded about half the Chinese and Indians, and by safeguards for the special position of the Malays.

The federation created consisted of two types of units: the nine Malay States under their Rulers and each with State executive and legislative councils, and the two settlements of Malacca and Penang, each with Settlement Councils, in

¹S.I. 1948, No. 108, The Federation of Malaya Order in Council 1948. See also Cmd. 7171/1947, Fed. of Malaya. Summary of Revised Constitutional Proposals; Col. No. 330/1957, Report of Fed. of Malaya Constitutional Commission (Reid), paras. 22-35.

which the chief executive officers were Resident Commissioners acting in the name of the High Commissioner.

Central institutions of government were also established. The Executive Council headed by a High Commissioner, at first consisted of a majority of officials but with some unofficial members, but in 1951 a "quasi-ministerial" system was adopted and in 1956 the council was further amended to operate more as a cabinet with a Chief Minister. Initially the Legislative Council was composed of a majority of nominated unofficial members including representatives of the State and Settlement Councils, the racial communities and various economic and professional groups. In 1955 the principle of election was introduced, the Legislative Council being given a majority of elected members. Under the 1948 Agreement, there was also a Conference of Rulers, composed of the Rulers of the nine Malay States attended by their Malay advisers, which performed some of the functions of a second chamber, as a focus for state views upon central legislation and policy, and some of the functions of a Premier's Conference by bringing together the heads of the state governments.¹

In the division of powers, the Agreement gave "very wide powers to the central authorities who could, if they so desired, legislate against the wishes of the State Governments on almost all questions other than those touching Muslim

¹ Federation of Malaya Agreement, 1948, cls. 67-76. A Standing Committee of 2 Rulers represented the Rulers in signifying assent to federal bills (cls. 75-6).

religion and Malay custom".¹ Indeed, what devolution of power there was chiefly took the form of a compulsory delegation to the states of executive authority over central laws on certain subjects. The central government was given powerful controls over the state and settlement governments through the special powers of the High Commissioner to give them directions, through the central control of state budgets, and through a centralized civil service under the control of the High Commissioner. As a result the 1948 constitution was aptly described as "a loose and ill-defined hybrid somewhere between unitary government and federation".² In practice, however, the federation was less centralized.³ In large areas potential central legislative power was left unexercised, the bulk of administration being left to the states. In addition the central government never introduced a major change of policy or legislation without first obtaining the agreement of all the State Governments concerned, and inter-government consultation was a characteristic feature of Malayan federal government 1948-1956. In 1956, a revision of the financial allocation improved the financial

¹Col. No. 330/1957, Op.cit., para. 33. See also paras. 23, 26.

²D. Sington, Malayan Perspective, (London, 1953), p. 7.

³Col. No. 330/1957, Op.cit., paras. 33, 86, 101, 102, 103, 105-6, 120.

autonomy of the States, further strengthening their position.¹

A special characteristic of the 1948 Agreement was that, although a Supreme Court was established, the task of constitutional interpretation was assigned to a special Interpretation Tribunal.² The amendment of the constitution was normally by federal ordinance or in certain cases by proclamation of the High Commissioner, but in each case the approval of the Rulers or the State and Settlement Councils was also required.³

The 1948 Federation of Malaya Agreement remained in effect until 1957. Politics in Malaya during this period was characterized by the Communist Emergency, the progressive advance towards self-government, and the growth of political parties. In early 1948 the Malayan Communist Party made an abrupt change in policy from labour agitation to armed revolt, and as a result, the need to combat terrorism and guerrilla warfare provided a strong impetus for centralized administration. This decade also saw a progressive advance towards self-government with the introduction of the principle of responsibility in the central executive and the principle of elected representation in the central legislature. These advances encouraged the development of political parties, which because of the existence of the Malay based U.M.N.O. with policies favouring

¹Report of Committee to Review Financial Provisions of Federation of Malaya Agreement, 1948 (Kuala Lumpur, 1955).

²Federation of Malaya Agreement 1948, cl. 153.

³Ibid., cls. 3, 6.

the Malays, took the form of communal parties, the Malayan Chinese Association among the Chinese and the Malayan Indian Union among the Indians. When Dato Onn bin Ja'afar, recognizing the need for intercommunal unity if independence and self-rule were to be possible, attempted to found a new multi-racial Independence of Malaya Party, the result was an opposing alliance between the major communal parties. The alliance was so successful that in the 1955 federal elections it swept 51 of the 52 elected seats in the Federal Legislative Council, largely as a result of its superior organization and its campaign cry of "merdeka".

At the constitutional conference in London in 1956, the Alliance's "Merdeka Mission" obtained agreement that independence should be proclaimed in 1957 and that a constitutional commission should be appointed to review the existing constitution and to draft suggestions for a new federal constitution for Malaya at independence.¹ The recommendations of the Reid Commission were on the whole accepted and incorporated in the new constitution, although at the insistence of the U.M.N.O., the constitution was on some points made more conservative and favourable to the Malays.²

The Federation of Malaya Agreement, 1957, like its predecessor, concentrated legislative, executive and financial

¹Cmd. 9714/1956, Report by the Federation of Malaya Constitutional Conference, paras. 74-5.

²Col. No. 330/1957, Report of Constitutional Commission 1957 (Reid); Cmd. 210/1957, Constitutional Proposals for the Federation of Malaya.

power in the central government, for the only exclusive state legislative powers of any significance were land, agriculture, forestry and local government.¹ The previous arrangement whereby in many matters legislative power was conferred on the central government but executive power on the states, was rejected as "impractical", and exhaustive federal, state and concurrent lists were now incorporated, with legislative and executive authority generally, though not always, going together. The predominance of the central government was assured by the sweeping central power to act even in the exclusive state sphere in order to implement treaties,² to promote uniformity of state laws,³ to implement national economic development programmes,⁴ and in cases of emergency.⁵ Flexibility and inter-government co-operation were aimed at in the provisions enabling delegation of legislative and executive powers⁶ and in the considerable number of inter-governmental councils established by the constitution.⁷ Both central

¹S.I. 1957, No. 1533, Annex: First Schedule, Constitution of the Federation of Malaya, 1957, articles 73-112, 9th and 10th Schedules.

²Art. 76(1)(a).

³Art. 76(1)(b), (3)(4).

⁴Art. 92(1).

⁵Arts. 149-151, 71.

⁶Arts. 76(1)(c), 80(4,5).

⁷Arts. 87, 91, 108.

predominance and flexibility were also enhanced by the constitutional amendment procedure, which, although normally requiring special majorities in the central legislature, in only a few cases requires ratification by the state legislatures or the Conference of Rulers.¹

Under the new constitution, the Settlements, Penang and Malacca, were severed from the British Crown and became states equal in rank to the other states in the Federation, although headed by Governors rather than hereditary Rulers. The Federation itself was now headed by a Monarch, chosen for a five-year term by the Conference of Rulers from amongst themselves on the basis of seniority. The central Parliament became truly bicameral with the addition of a Senate composed partly of nominated members and partly of senators elected by the state legislatures. The Conference of Rulers continued to operate, its functions including the election of the Monarch, giving or withholding assent to certain laws, advising the Monarch on some appointments, and in company with the central prime minister and state chief ministers deliberating questions of national policy.²

The separate Interpretation Tribunal was abandoned, the courts being given authority to interpret the constitution and the Supreme Court exclusive jurisdiction in any inter-

¹Arts.159, 2.

²Art. 38 and Fifth Schedule.

government disputes. The scope of judicial authority was also enhanced by the inclusion in the constitution of a set of fundamental liberties.

The new constitution of the Federation of Malaya went into effect with the commencement of independence on 31 August 1957.¹ In the early years of its operation, the continued dominance of the Alliance was the major factor for political stability. The federal and state elections of 1959, swept the Alliance back into power with large majorities, except in the north-eastern states of Kelantan and Trengganu where the victories of the Pan-Malayan Islamic Party suggested a tendency to Malay communalism. On the other hand, in areas where the Chinese vote was dominant, the Alliance gained a majority of seats, and the Socialist Front, also a recognizably inter-communal party, was the most successful opposition. The dominance of the Alliance both at federal and state levels provided an impetus for centralization as did the continued State of Emergency which was finally terminated only in mid-1960. The tendencies towards the further concentration of central power were illustrated by the first major constitutional amendment in 1960 which enhanced the central powers of preventive detention, set up a national council on local government, and placed the appointment of Supreme Court judges solely in the hands of the central cabinet.

¹Federation of Malaya Independence Act 1957, (5 & 6 Eliz. 2, ch. 20); S.I. 1957, No. 1533, Federation of Malaya Order in Council, ss. 1,2.

An issue which faced the Federation of Malaya in its early years of independence was the question of its relation to Singapore. In the plan for the Malayan Union 1946, Singapore was expressly excluded because of its different economic interests as an entrepot trade centre based on free trade, because its predominantly Chinese population would, if included in Malaya, give the Chinese a majority over the Malays, and because of Britain's special strategic interests in Singapore. As a result, in spite of the considerable economic interdependence between the island and the peninsula, Singapore was constituted a separate Crown Colony in 1946 and remained outside the Federation of Malaya formed in 1948. Singapore underwent its own political development with major constitutional advances in 1948, 1955 and finally 1959 when it received internal self-government as the State of Singapore. The Singapore leaders, recognizing the inability of Singapore to stand completely independent on its own, were strongly in favour of association with the Federation and discussed the issue with the Malayan government several times. Malayan leaders were generally more reluctant, however, fearing that the addition of a million or more factious Chinese would upset the delicate racial balance in the Federation. As conservatives, the Malayan leaders also distrusted the socialist government and strong Communist elements in Singapore. But Singapore continued to press for union until in 1961 Lee Kuan Yew persuaded Prime Minister Tunku Abdul Rahman to agree to plans

for a merger of Malaya and Singapore to take place in 1963.¹ The Malayan change of heart was largely prompted by concern that, unless taken under the protective custody of the Federation, Singapore might be taken over by Communists and then used as a base for subverting the Federation. In order to offset Malay fears of Chinese preponderance within the Federation, Tunku Abdul Rahman at the same time began negotiations with the British Government for the inclusion of its Borneo territories within a widened Federation of Malaysia.² The Sultan of little Brunei, anxious about the future disposal of his oil revenues and about his personal status, decided against acceding, but in the two larger Borneo territories of North Borneo and Sarawak political parties supporting Malaysia secured large majorities in elections which were subsequently endorsed by a United Nations mission. Finally in September 1963 the Federation of Malaysia was established by joining Singapore, Sarawak and Sabah (North Borneo) to the states of Malaya.

In form, the 1957 Constitution was retained, with modifications being made to it by the Malaysia Act, 1963, but in

¹ Singapore Cmd. 33/1961, Memorandum Setting Out Heads of Agreement between Federation of Malaya and Singapore.

² See Cmd. 1563/1961, Federation of Malaysia: Joint Statement by the Governments of the United Kingdom and of the Federation of Malaya (London); Cmd. 1794/1962, Report of the Commission of Enquiry, North Borneo and Sarawak, 1962 (London); Cmd. 1954/1963, Malaysia, Report of the Inter-Governmental Committee (London); Cmd. 2094/1963, Malaysia, Agreement Concluded between the United Kingdom, the Federation of Malaya, North Borneo, Sarawak and Singapore (London).

effect the changes were so substantial as to establish a new federal structure. A notable feature was the marked variation in the relation of different states to the central government. The status of the Malayan states remained unchanged, but the new states were granted considerably more legislative, executive, and financial autonomy, and their special interests were more fully safeguarded under the Constitution. Created in the face of Indonesian hostility, the new federation found itself immediately under political and economic strains resulting from the need to defend itself. Moreover, the unwillingness of the Alliance Party to allow Lee Kuan Yew a partnership in federal decision-making and the desire of the People's Action Party to play a role in federal politics rather than confining its activities to Singapore led to a challenge by the P.A.P. against Malay political predominance. The result was mounting tension which was relieved only when Singapore was evicted from the Federation in 1965.

4. The Federation of Nigeria

As a unit of government, Nigeria has been described as "an artificial creation, ...perhaps the most artificial of the many administrative units created in the course of the European occupation of Africa."¹ Prior to British rule there was no Nigerian unity. Northern Nigeria, where Islam provided a transtribal bond, historically belonged to the western Sudan and was economically oriented toward Tripoli and Egypt; southern Nigeria, on the other hand, isolated from the impact of Islam by the dense and inhospitable tropical rain forest and by the tsetse fly, had for long been part of the Atlantic world, linked to it by the activities of the slave traders and the missionaries. Moreover, within the distinct regions of north and south, there were a multitude of political, ethnic and tribal groups. In the north, the Muslim Hausa, Fulani and Nupe, and most of the smaller 'pagan tribes' of the middle belt were organized into a large number of semi-independent emirates governed by a Fulani aristocracy, but the Muslim Kanuri of Bornu and the non-Muslim Tiv south of the Benue River remained unconquered by the Fulani. The south was even more fragmented. In the south-west there existed the sizable Yoruba and Edo kingdoms while in the south-east there were the small semi-autonomous communities of the Ibo, Ibibio, and Ijaw-speaking peoples, as well as other politically more splintered tribes. Thus, a leading Nigerian nationalist wrote little more than a decade ago:

¹ Lord Hailey, An African Survey, (London, rev. ed. 1956), p. 307.

Nigeria is not a nation. It is a mere geographical expression. There are no Nigerians in the same sense as there are 'English', 'Welsh', or 'French'. The word 'Nigerian' is merely a distinctive appellation to distinguish those who live within the boundaries of Nigeria from those who do not.¹

It was on this situation that British rule "was imposed like a great steel grid over the amorphous cellular tissue of tribal Africa".² During the nineteenth century the British penetrated into the hinterland unevenly and gradually from three unco-ordinated bases: Lagos which was annexed as a colony in 1861, Old Calabar where a Foreign Office Consul was located after 1849, and Lokoja, the base of the trading companies which were amalgamated in 1886 to form the Royal Niger Company with a monopoly of trade in the Niger Basin. By 1900 these had developed into three separate territories under British rule: the Colony of Lagos, the Protectorate of Southern Nigeria, and the Protectorate of Northern Nigeria.³ The next two decades saw the administrative unification of Nigeria. In 1906 the Colony

¹O. Awolowo, Path to Nigerian Freedom (London, 1947), pp. 47-8

²Margery Perham in J. Wheare, Nigerian Legislative Council (London, 1950), p. x.

³In 1885 at the Berlin Conference the British claim to a sphere of influence over the Niger Basin was recognized and following this Lagos was severed from the Gold Coast and given its own Governor, the Oil Rivers Protectorate was established (extended and renamed the Niger Coast Protectorate in 1893 and renamed the Protectorate of Southern Nigeria in 1900), and the Royal Niger Company was given its charter. In 1898 the British and French governments signed a convention regulating boundaries and in 1900 the administrative rights and powers of the Royal Niger Company were taken over by the British Crown to form the Protectorate of Northern Nigeria.

and the Southern Protectorate were united, and in 1914 the Colony and the two Protectorates were amalgamated and ostensibly became a single political unit called the Colony and Protectorate of Nigeria, with its capital at Lagos and Lugard as its Governor-General. An advisory 'Nigerian Council' representing the whole area was also established at this time, but in 1922 a new constitution established a Legislative Council which lasted, with amendments in 1928 and 1941 making some concessions to the principle of election, until 1946. In the meantime, at the end of the 1914-18 war, the adjacent German Cameroons had been placed under British mandate by the League of Nations and in 1923 provision was made for the administration of the Southern Cameroons as part of Southern Provinces and of the Northern Cameroons as part of the adjacent Northern Provinces of Nigeria. Thus as a political entity, Nigeria was a British imperial creation.

But while common British rule, and the creation of internal peace and order making free movement and commerce possible, contributed to Nigerian unity, the form and character of the British administrative superstructure sowed the seeds of later regionalism. Even after the amalgamation of Nigeria under a common Governor-General in 1914, the north and south were administered by two virtually distinct bureaucracies, the Governor-General being virtually "the only bond of political unity".¹ Moreover, while the policy of indirect rule through traditional authorities was applied in the north, constitutional development in this direction proved less appropriate in the south,

¹J. S. Coleman, Nigeria: Background to Nationalism (Berkeley and Los Angeles, 1958), p. 46.

and the Legislative Council, its legislative jurisdiction limited to the south, represented a policy of importing European political institutions. In addition to the division between north and south both in administration and in policy, divisions were maintained within Southern Nigeria, Lagos retained its unique legal status as a colony until 1951, and the southern provinces were divided in 1939, in the interests of administrative convenience, into two groups, the western and eastern, with the Niger River as the boundary. Describing the Nigerian situation in 1945, Governor Richards wrote: "At present, no unity exists, nor does the constitution encourage its growth."¹

By 1945, the increasingly vigorous criticism of the existing constitutional arrangements by African groups outside the Legislative Council made clear the need for reform. The problem facing British officialdom was that of reconciling the demand of the educated southerners that the Legislative Council should be expanded into a parliamentary system of government, acting as the central government for the whole of Nigeria, with the policy in the north whereby the native authority system had been developed as the primary unit of African self-government. Views within the Colonial Office differed on the solution: some, mainly British officials in the north, favoured progressively wider powers for the emirates until they became self-governing; others leaned towards a radical decentralization within Nigeria in which the three groups of provinces would be separate federations held together by a weak central super-structure, thus creating a three-tier structure similar to the

¹ Governor's despatch, Para. 3, in Cmd 6599/1945, Proposals for the Revision of the Constitution of Nigeria (London).

cabinet mission proposals for India in 1946; still others such as Sir Bernard Bourdillon, Governor of Nigeria 1935-1943, and Lord Hailey, saw the future in the promotion of political unity by a unitary structure including the north.

In 1945, Sir Arthur Richards, the Governor, strongly influenced by Bourdillon's views, submitted proposals which led to a new constitution.¹ Its objectives were:

to promote the unity of Nigeria; to provide adequately within the unity for the diverse elements which make up the country; and to secure greater participation by Africans in the discussion of their own affairs.²

Under the 'Richards Constitution' which went into effect in 1946, the sovereign powers of the Legislative and Executive Councils were extended to cover the whole of Nigeria.³ At the same time Regional Councils, chiefly electoral colleges and otherwise advisory in function, were created for each of the groups of provinces, to serve as a link between the new national government and the local native authorities. Although in view of the advisory nature of the Regional Councils, the character of the new constitution was fundamentally unitary, it set the mould within which the federal structure subsequently grew. On the one hand, it established a central legislature for the whole of Nigeria for the first time, a step towards Nigerian unity.

¹Cmd. 6599/1945, Proposals for the Revision of the Constitution of Nigeria.

²Ibid., Governor's Despatch, Para. 3.

³S.R. & O. 1946, No. 1370, The Nigeria (Legislative Council) Order in Council 1946, S. 8.

On the other hand, by assuming that the former groups of northern, eastern and western provinces corresponded to the ethnic and cultural diversities of Nigeria, it established the three Regions, each actually ethnically heterogeneous, as the fundamental political units within Nigeria.

The unitary nature of the Richards Constitution was intended to promote Nigerian unity, but in practice it sharpened inter-regional fears and hostilities, for each group feared the concentration of power in the central government as a potential instrument for domination by another region. Northern demands for autonomy and intensified Yoruba-Ibo rivalry were the result. Thus, the operation of the Richards Constitution was characterized by the regionalization of Nigerian nationalism and by the appearance of political parties such as the Northern Peoples' Congress and the Action Group, primarily motivated by the desire to defend their own regional ethnic interests.

When the British Government agreed that the constitution should be revised after a series of stage-by-stage conferences, beginning at the local level and culminating in a General Conference at Ibadan in 1950, attention therefore became focused on the issues of regional representation in the central government, the devolution of power to the regions, and the correspondence of regional boundaries to ethnic distribution.¹ The 'Macpherson Constitution' of 1951 which resulted from these

¹ Nigerian Government: Review of the Constitution (Regional Recommendations) 1949 (Lagos, 1949); Report of the Drafting Committee on the Constitution (Lagos, 1950); Proceedings of the General Conference on the Review of the Constitution, Ibadan, 1950 (Lagos, 1950); Report of the Select Committee of the Legislative Council on the Constitutional Review (Enugu, 1950); Legislative Council Debates, 16 Sept., 1950.

consultations,¹ retained the existing three Regions as the political units within Nigeria, the only change being the inclusion of Lagos in the Western Region, and certain legislative, executive, and taxing powers were now conferred on the Regional Legislatures and provision made for the first time for Regional Executive Councils.

Although this constitution has been described as "the decision to convert Nigeria into a Federation",² the constitution still remained, in the traditional terminology, ostensibly unitary. Regional powers, for instance, were not exclusive but subordinate to the general authority of the central government. The single public service responsible to the Governor remained, as did the single judiciary and the centralized marketing boards. Furthermore, the Governor's discretionary reserved powers strengthened the unitary character of the constitution. On the other hand, there were some quasi-confederal features. Except for its ex officio and special members, the central House of Representatives was elected indirectly, members being chosen by the Regional Legislatures from amongst their own numbers. The Central Council of Ministers was also in a sense indirectly elected, for although the four ministers from each Region had

¹ S. I. 1951, No. 1172, The Nigeria (Constitution) Order in Council, 1951. The constitution was usually so named after Sir John Macpherson, Governor of Nigeria 1948-1955, although the constitution itself was the product of the series of conferences.

² Nigerian Government, Report of the Commission on Revenue Allocation (Hicks-Phillipson), (Lagos, 1951), para. 33. The 1951 Constitution has also been compared in form to the 'democratic centralism' in the Soviet Union, 1923-1936 (A.H. Birch, Federalism, Finance and Social Legislation) (Oxford, 1955), p. 297.

to be members of the House of Representatives, nominations to the Council were subject to approval by the Regional Legislatures, making Ministers "to all intents and purposes, prisoners of their Regional Governments".¹ With different parties in power in the different Regions, a cohesive Council was impossible, and in practice it was little more than a Committee of the Regions.

Unfortunately, this unique blend of unitary and confederal features, suffered the defects of both with the benefits of neither. The central concentration of sovereignty and the subordination of the Regional governments continued to excite regional fears; while the lack of cohesiveness in the central legislature and executive, both in effect consisting of delegates from the Regional Legislatures, soon resulted in political deadlock in the central government. These difficulties came to a climax in the tragic riots of 1953 and the resultant northern threats of secession.

The solution worked out at the London Conference of 1953 and put into effect the next year, was the adoption of an orthodox federal constitution.² In spite of other differences amongst them, all the Nigerian delegations at the conference agreed upon

¹K. Ezera, Constitutional Developments in Nigeria (Cambridge, 1960), p. 385.

²Cmd. 8934/1953, Report by the Conference on the Nigerian Constitution (London); Cmd. 9059/1954, Report by the Resumed Conference on the Nigerian Constitution (London); S. I. 1954, No. 1146, The Nigeria (Constitution) Order in Council, 1954; S. I. 1954, No. 1147, The Nigeria (Offices of Governor-General and Governors) Order in Council 1954.

the desirability of regional autonomy.¹ The new constitution made possible a considerable measure of regional autonomy, without sacrificing the major benefits of unity. Moreover, the federal structure enabled a solution of the problem causing the greatest hostility between the north and the south - the issue of self-government by 1956 which had been at the base of northern fears and southern frustrations. The federal constitution made possible, within a united Nigeria, the early grant of self-government to the two southern regions that were clamouring for it, while postponing northern and federal self-government to a later date in order to allay northern anxieties. Thus the constitutional agreements of 1953 represented "an ingenious compromise of what had been regarded as intractable positions" and in view of the marked growth of amity and co-operation among the regional leaders after 1954, one could justifiably say, "the idea of a united Nigeria was the real victor".²

The Nigerian constitution of 1954 was based on orthodox federal principles. There was an explicit division of legislative, executive and financial powers, the central government being allocated limited and specified powers by the exclusive and concurrent lists, while the Regional governments were given power also over matters on the concurrent list and exclusive power over all unlisted residual matters. Thus the new constitution involved a recognition of regional autonomy by a genuine constitutional division of powers rather than by devolution

¹Cmd. 8934/1953, Op. cit., para 7.

²Coleman, Nigeria: Background to Nationalism, p. 402.

from the sovereign central government as had previously been the case. The principle of a dual polity was also extended in the new provisions for separate regional public services, regional judiciaries, regional marketing boards, and regional Governors in the place of Lieutenant-Governors. There was also a Federal Supreme Court with exclusive jurisdiction to act as an impartial tribunal in inter-government disputes over their constitutional powers. The power of amending the constitution was left in the hands of the British Government, thus making the constitution independent of both levels of government.

The central legislature, the House of Representatives, remained unicameral but ceased to consist of delegates from the Regional Legislatures. Dual membership of central and regional legislatures was abolished, central legislators being elected directly in the south, and indirectly by special electoral colleges distinct from the Regional Legislature, in the north. The issue of regional representation in the central legislature had for some time been a controversial issue because the population of the Northern Region was greater than that of the other two combined. A bicameral central legislature was considered, but finally a unicameral one in which the Northern Region was restricted to half the seats was agreed upon. The confederal features of the central Council of Ministers were removed: Regional Governors were no longer members, and ministers were appointed by the Governor-General without reference to the Regional Legislatures. The constitution did, however, explicitly provide for equal representation of the Regions on

the Council, appointments to be made by the Governor-General either on the recommendation of the leader of the party with an overall majority or, if this was lacking, on the recommendations of the leaders in the House of Representatives of the majority party in the House from each Region.¹

The basic regional structure of 1946 and 1951 was continued, because of resistance by the Northern Peoples' Congress to any change in northern boundaries. Thus there was no departure from the earlier assumption that these represented the fundamental social diversities of Nigeria. Some changes were made, however; Lagos, against bitter Action Group opposition, was separated from the Western Region, and as the capital made a federal territory; the Southern Cameroons, because of its special status as a U.N. Trust Territory was set apart from the Eastern Region as a separate unit, but without full regional autonomy.

In operation, the constitution, by granting regional autonomy, helped to reduce inter-regional fears and tensions and strengthened the central government by removing its constitutional dependence upon the regional governments. The weakness of the central executive was by no means cured, however, for the special 'federal' provisions for the Council of Ministers, coupled with the regional distribution of political parties in the House of Representatives meant that a homogeneous Council

¹ S.I. 1954, No. 1146, The Nigeria (Constitution) Order in Council, 1954, s. 88.

was impossible to obtain.¹ This weakness was accentuated by the preference of the major national party leaders for positions of responsibility as Regional Premiers.² Thus, the central government tended to be ineffective and despised - the catspaw and scapegoat of the regional leaders.

Following a series of constitutional conferences in 1957 and 1958 a considerable number of amendments were made to the Constitution, but these did not alter the fundamentally federal structure of the 1954 constitution.³ Among the early amendments

¹ As a result of the 1954 federal elections, which resulted in no overall majority in the House of Representatives (184 seats), the Northern Peoples' Congress which won the most seats, 79 members, all from the Northern Region, gained the right to nominate the 3 ministers for that Region, the National Council of Nigeria and the Cameroons, with a total of 56 seats, but capturing a majority in each of the Eastern and Western Regions won the right to nominate the 6 ministers for those two Regions, and the Kamerouns National Congress, with all 6 seats in the Southern Cameroons nominated the single minister representing that territory.

² N. Azikiwe, (national leader of the N.C.N.C.), the Sardauna of Sokoto, (national leader of the N.P.C.), O. Awolowo, (national leader of the Action Group), and E.M.L. Enderley, (leader of the K.N.C.) each chose to remain as a regional premier, leading respectively the Eastern, Northern, Western, and Southern Cameroons governments. During the decade, 1951-1961, different parties were in power in the three Regions, the N.P.C. holding a majority in the Northern Region House of Assembly, the N.C.N.C. doing so in the Eastern Region House of Assembly, and the Action Group controlling the Western Region House of Assembly, throughout the period.

³ Cmnd. 207/1957, Report by Nigeria Constitutional Conference (London); Nigerian Government, Report of Ad Hoc Meeting of Nigeria Constitutional Conference in Lagos 1958 (Lagos, 1958); Cmnd. 569/1958, Report by Resumed Nigeria Constitutional Conference (London)).

was the grant of internal self-government to the Eastern and Western Regions in 1957 and to the Northern Region in 1959, together with consequent changes in the Regional constitutions concerning the relative powers and roles of the Governors, executives and legislatures. Alterations were also made to the institutions of central government. In 1957, the office of Federal Prime Minister, with power to nominate his own cabinet was established. Balewa, as leader of the largest party in the House of Representatives became the first Federal Prime Minister, and formed a coalition 'national government' of all three major parties which lasted until the elections in 1959. The abandoning of previous arrangements for the Council of Ministers and the adoption of more orthodox cabinet government did a great deal to strengthen the central government. The central legislature was also modified by the agreement to add a senate at the dissolution of the existing House of Representatives in 1959. Thereafter, seats in the lower house were allotted according to population, thus giving the Northern Region a clear majority and in the new second chamber Regions were given equal representation, the senators being appointed by the Regional governments. Some adjustments to the legislative lists were also agreed upon at the constitutional conferences, but the balance in the distribution of powers was not fundamentally altered. A complete overhaul of revenue allocation, which had been the source of much acrimony, was also undertaken. The principle of derivation as the basis for revenue transfers to the Regions was abandoned in favour of a scheme increasing independent

Regional revenues and providing for transfers from a distributable pool on a formula taking into account factors such as needs, population and balanced national development.¹

At these constitutional conferences, the prospect of federal independence in 1960 raised a number of contentious issues which were indicative of the continued distrust and fear existing among the diverse groups within Nigeria. A major issue was the demand, arising from the fears of minorities within existing heterogeneous Regions, for the splitting of these Regions in order to create new ethnic states. A special commission appointed to consider the problem stressed the difficulties involved in setting up new states which would be viable and ethnically homogeneous, and suggested the adoption of other safeguards instead to allay minority fears.² When the Colonial Secretary warned that splitting the Regions would inevitably delay federal independence, the Nigerian leaders deferred the creation of new states until after independence.³ Another example of the continued prevalence of minority fears was the length of time spent at the 1958 conference in working out the details of the fundamental rights to

¹ Cmnd. 481/1958, Report of the Fiscal Commissioner (London); Cmnd. 569/1958, Op. cit., paras. 36-43.

² Cmnd. 505/1958, Nigeria, Report of the Commission appointed to enquire into the fears of minorities and the means of allaying them (London), ch. 14.

³ Cmnd. 569/1958, Op. cit., paras. 44-50. The new states issue remained alive, however, being hotly disputed in 1959 federal elections.

be included in the constitution.¹ There was also a prolonged controversy over the control of the police force, for minorities within the Regions feared regional control of the police as an instrument of domination, while the regional majorities themselves feared central control. The solution was a compromise by which the police were preserved as a unified force but were administered by an inter-government Police Council, subject to ultimate control resting with the central government.² The problem of a procedure for constitutional amendment was also considered at these conferences and agreement was reached on an extremely rigid process under which large sections of the constitution would be specially entrenched, normally requiring a majority of two-thirds of the members of each central legislative House and the concurrence of two of the three Regions. The prospect of Nigerian independence also provoked a hesitancy in the Southern Cameroons about its continued membership in the Federation. Because of their special status as Trusteeship Territories, both the Northern and Southern Cameroons were given the chance to indicate their choice in plebiscites. In February, 1961, the Northern Cameroons voted to remain a part of the Northern Region of Nigeria, but the Southern Cameroons chose by a large majority to join the Cameroons Republic instead.

Late in 1959, federal elections were held and again no single party gained a majority. The three major parties each

¹Ibid., paras. 6-7. About 10 of the 30 days of the conference were spent on this subject.

²Ibid., paras. 8-17.

gained a majority of the seats in their home Regions although the N.C.N.C. gained considerable support in the Western Region and the Action Group made some inroads in each of the other Regions.¹ The N.P.C., with all its members from the north once again emerged the largest single party, and in coalition with the N.C.N.C. formed a government under the continued leadership of Balewa. One of the most significant features of this election was the movement of Azikiwe and Awolowo, leaders of two of the three major parties, from regional politics to the central arena, indicating the increased prestige of the central government with independence impending.

On October 1st, 1960, the Federation achieved independence and a new constitution went into effect.² Although a new document, the independence constitution made little change in the basic federal structure. The main modifications from the previous constitution, as already amended 1954-1960, were in the removal of most of the Governor-General's discretionary powers, and in the addition as agreed at the earlier constitutional

¹ Distribution of Seats in House of Representatives after 1959 federal elections (Source, Electoral Commission, Report on the Nigeria Federal Elections (Lagos, 1959), Appendix I):

	N.R.	E.R.	W.R.	Lagos	Total	Support in H of R
N.P.C.	134	-	-	-	134	148)
N.C.N.C.	-	58	21	2	81)	81)-Govt.
N.E.P.U.	8	-	-	-	8)	8)
A.G.	25	14	33	1	73	75)-Opp.
Small parties & Independents:	7	1	8	-	16	-
	174	73	62	3	312	312

² Nigeria Independence Act, 1960 (8 & 9 Eliz. 2 ch 55); S.I. 1960, No. 1652, The Nigeria (Constitution) Order in Council 1960.

conferences, of an amendment procedure and of central emergency powers "to ensure the safety of the nation against internal and external threats".¹ A further constitutional change came in 1963 with the adoption of a new republican constitution. The Governor-General was replaced by a President as nominal head of the executive, appeals to the Judicial Committee of the Privy Council were abolished, the procedure for the appointment of judges was changed, and a variety of other minor adjustments were made. Although the same federal framework was retained and much of the wording remained unchanged, the conversion to a republic was made the occasion for adopting a completely new constitution.²

Until 1966, the Nigerian federal system exhibited a remarkable degree of stability, but this stability represented an ability to overcome successive nearly fatal crises rather than the absence of political strife. For instance, throughout the dozen years of its existence, there were persistent demands for the alteration of the existing regional units. Two pressures were at work. The three original regions had each contained significant ethnic minorities - the non-Muslim Middle Belt in the north, the non-Yoruba midwest, and the non-Ibo peoples of the Calabar, Rivers, and Ogoja provinces in the east - and these groups demanded that the existing regions be splintered to form ethnically homogeneous 'natural' states. Added to these pressures was the anxiety

¹Cmnd. 569/1958, Op. cit., para. 77.

²The Constitution of the Federal Republic of Nigeria (1963, no. 20).

of southerners as a group at the preponderant size of the Northern Region possessing more than half of the federal population and area. Southern leaders, therefore, regularly argued that northern hegemony within the federal system could be avoided only if the Northern Region were split. Most of these pressures were resisted, but in 1963 a new Mid-Western Region was carved out of the Western Region.¹ Another continual source of bitter controversy was the issue of regional representation in the central legislature and cabinet. Because the population of the Northern Region was greater than that of the others combined, and because the political parties especially the Northern Peoples' Congress were chiefly regional in their bases of support, the issue was a crucial one. First, a unicameral legislature was established in which the Northern Region was limited to half the seats, but in 1959 this was replaced by a bicameral legislature in which the House of Representatives was based on representation according to population, and the Senate was based on equal representation for the regional units. Controversy did not abate, however, for when the 1962-3 census confirmed that the automatic northern majority in the House of Representatives would be permanent, rather than temporary as the southerners had expected, a series of heated disputes were provoked which almost led to the disintegration of the federation at the time of

¹Mid-Western Region Act, 1962 (1962, no. 6); Mid-Western Region (Transitional Provisions) Act, 1963 (1963, no. 18); Constitution of Mid-Western Nigeria Act, 1964.

the federal election crisis in 1964-5. The distribution of finances among governments, and especially the application of the principle of derivation in the assignment of transfers of revenue to the Regions, was a subject of acrimony also, no less than three fiscal commissions being appointed in the ten years before independence. The use in 1962 by the central government of its emergency powers was not only a source of controversy but in the final analysis irrevocably destroyed the balance of political forces which had provided stability for a decade. In 1962, when an internal dispute in the Action Group created a constitutional crisis in the Western Region, the central coalition of the N.P.C.-N.C.N.C. took the opportunity to exercise the central emergency powers and to impose central administration in that region for seven months. This action, followed by the corruption investigations and treason trials, seriously weakened the Action Group, both as the federal opposition to the N.P.C.-N.C.N.C. coalition, and as the dominant party in the Western Region. The relatively dominant position of the N.P.C. was sufficiently reinforced that at the federal elections late in 1964 it was able to abandon the coalition with the N.C.N.C. and to take as its ally the Nigerian National Democratic Party in the west. But the lengths to which this coalition went in rigging the federal election and then the Western regional election late in 1965 became a source of increasing unrest which culminated in the military coup of January 1966 and the end of the constitutional régime.

Throughout the life of the federation, regionalism had been an especially potent force, accentuated by the intensity of regional loyalties, by the bargaining power of regional governments due to the small number of regions and their large size, and by the regional basis of the political parties and of the governing élites. After a decade of relative success, the breakdown in the machinery for generating an inter-regional consensus led to the failure of the federal system.

5. The Federation of Rhodesia and Nyasaland

In the mid-nineteenth century Central Africa was practically unknown to Europeans except for a handful of explorers. In what is now known as Southern Rhodesia the Matabele, under Lobengula, were dominant frequently raiding the less warlike Mashona tribes to the east; north of the Zambesi River the Barotse tribe exercised a wide and little disputed authority; in Nyasaland the Zulu Angoni were subduing the indigenous tribes in the north-east and warring with the Yao tribe in the south.

The development of British influence in the three territories, while linked by certain common features, was in the main carried out separately. Southern Rhodesia was developed through the efforts of Rhodes' British South Africa Company, but in 1923 as a result of the demands of the settlers, it was annexed to the Crown as a Crown Colony and the settlers were granted responsible government. Northern Rhodesia also came under British influence through the activities of the same company, but here the process was more peaceful and settlement and development more gradual. In 1924 the administration of Northern Rhodesia was transferred to the Crown, but because of the scanty settler population it remained a protectorate, officials dominating the Legislative Council until 1945. Nyasaland came under British influence in a different way, largely as a result of missionary efforts. In 1891, in order to facilitate the pacification of the area, a British Protectorate was proclaimed. The early economic development was largely under the auspices of the African Lakes

Company in which the British South Africa Company early acquired a controlling interest, but European settlement was much slower than even in Northern Rhodesia.

From 1915 on, the amalgamation of the Rhodesias was suggested on various occasions. In 1915 the British South Africa Company, which administered both territories, proposed uniting the Rhodesias for the sake of economy, but the Southern Rhodesian settlers rejected the scheme, fearing that union with the undeveloped and predominantly black north would prove an economic liability and delay their own achievement of self-government. Beginning in the 1920's, however, a number of factors began to change the outlook of the Southern Rhodesians. The discovery of the Northern Rhodesian copperbelt and the subsequent mushrooming of its wealth and settler population, made it economically valuable and a potential bulwark of settler government. At the same time, the victory of General Hertzog's Afrikaner nationalist party in the South African elections of 1924, produced a sharp reaction among the predominantly English-speaking settlers of Southern Rhodesia. The possibility of uniting with South Africa, rejected in the referendum of 1922, became even more unpopular, increasing interest northwards. The growth of anti-imperialist sentiment in Britain and the policy of 'paramountcy' of native interest, first enunciated for Kenya by the Duke of Devonshire in 1923, created a feeling of insecurity among the settlers about their future, and further encouraged settler solidarity between the Rhodesias.

In 1927 the appointment of the Hilton Young Commission on Closer Union of the Dependencies of East and Central Africa, provoked the settlers of Northern Rhodesia, who preferred union with the white south, to approach the Southern Rhodesian government for terms. The delegates, Captain Murray and Mr. Strike, received terms extremely favourable to Northern Rhodesia. The presentation of these views to the commission succeeded in neutralizing the possibility of recommendations for any union of Northern Rhodesia with East Africa. The commission itself concluded, however, against any immediate union of the Rhodesias, federal or unitary, because of their different native policies and different stages of constitutional progress.¹

The movement for amalgamation gained strength in the Rhodesias during the 1930's. It was spurred by the publication in 1930 of Lord Passfield's Memorandum reaffirming the application to Northern Rhodesia and Nyasaland, as well as East Africa, of the British policy of the 'Paramountcy' of African native interests.² The alarmed Northern Rhodesian settlers looked even more eagerly to union with self-governing Southern Rhodesia as an opportunity to free themselves from the Colonial Office and its native policies. Requests for a conference on amalgamation were, however, rejected by Lord

¹Cmd. 3234/1929, Report of the Commission on Closer Union of the Dependencies in Eastern and Central Africa (London), p. 282-3.

²Cmd. 3573/1930, Memorandum on Native Policy (London).

Passfield. This only provoked further support for union, but the sole concession was the institution of a Central African Governors' Conference, intended to achieve greater administrative co-ordination. In 1936, a conference of delegates from the Northern and Southern Rhodesia legislatures met and adopted a resolution in favour of the early amalgamation of the two territories. The British government again rejected the proposal but later set up a Royal Commission to enquire into the feasibility and desirability of closer co-operation between the three British Central African territories. The Bledisloe Report pointed to common economic, social and political problems making closer co-operation desirable. As an ultimate objective it favoured amalgamation rather than federation, because of the greater administrative efficiency of the former type of union. The commission, nevertheless, considered amalgamation unsuitable for the time being because of the marked difference in the native policies, constitutional status and economic development of the three territories, because the settler population was as yet unready either in numbers or in experience to govern the vast area, and because African opposition in the two northern protectorates displayed a "striking unanimity".¹

The Bledisloe Commission had, however, recommended an inter-territorial council and in 1945 the Central African

¹Cmd. 5949/1939, Report of the Rhodesia and Nyasaland Royal Commission (Bledisloe), (London), pp. 215-219; Cmd. 8233/1951 Central African Territories: Report of Conference on Closer Association, para. 14.

Council was established. Consisting of four members from each of the three territories, including the heads of their governments, the Council was a purely consultative and advisory body and was concerned chiefly with economic affairs and the operation of common services.

The establishment of the Central African Council did not subdue the hopes of the settlers for amalgamation. Indeed, with the signs of growing African political advance to the north, especially in West Africa, and the triumph of Dr. Malan's nationalist party to the south, the need for Central African solidarity appeared urgent. Led by Premier Huggins of Southern Rhodesia and Roy Welensky, the leading unofficial member in the Northern Rhodesia legislature, the settlers continued to press for a union of the three territories. When Colonel Oliver Stanley, the Opposition spokesman on colonial affairs, advised Welensky that the British Conservative party would consider amalgamation out of the question, but might support federation, Welensky convinced Huggins and later the major advocates of amalgamation that they should change their goal to federation of the three Central African territories.¹

¹For negotiations 1948-1953 leading to federation see especially: Cmd. 8233/1951, Central African Territories: Report of Conference on Closer Association (London); Cmd. 8411/1945, Closer Association in Central Africa (London); Cmd. 8573/1952, Draft Federal Scheme (London); Cmd. 8671/1952, Report of Judicial Commissioner (London); Cmd. 8672/1952, Report of Fiscal Commissioner (London); Cmd. 8673/1952, Report of Civil Service Preparatory Commission (London); Cmd. 8753/1953, Report by Conference on Federation (London); Cmd. 8754/1953, The Federal Scheme (London).

A conference of settlers was then held at Victoria Falls in 1949. Although it achieved little specific agreement, it did demonstrate the width of settler support and, because of the absence of African representatives, did arouse African suspicions of the scheme. Next, the Southern Rhodesian government brought pressure to bear by announcing its intention to withdraw from the Central African Council because of its inadequacies as a merely consultative body without executive powers.

Late in 1950, Mr. Griffiths, then Colonial Secretary, accepted Huggins' suggestion that a conference of officials be called to make a 'purely exploratory' investigation of the question of closer association. This concession was largely the result of the Colonial Office's new realistic assessment of the situation in Northern Rhodesia in which the initiative had passed to the local unofficials and officials there. The conference rejected a loose league as impractical and amalgamation, despite its simplicity and efficiency, as having little chance of acceptance.¹ The solution it suggested was a compromise on federal lines whereby the different native policies and different constitutional status of the protectorates might be preserved within a unified structure.² To allay African fears a special independent Affairs Board and a Minister for African Interests were also recommended.³

¹Cmd. 8233/1951, Op.cit., paras. 38-39.

²Ibid., paras. 40-45.

³Ibid., paras. 43, 49, 50-52, 95, Annex III.

The report was followed by a conference, this time composed of delegates of the three territorial and the British governments, held at Victoria Falls. The African representatives from the two northern territories became the centre of controversy when they made clear their apprehensions about being closely associated with Southern Rhodesia.¹ Although the final announcement of the conference stressed features meant to allay African fears and suspicions, African objections continued.

Although Griffiths had insisted that African consent was essential to any scheme of federation, the British elections of 1951 resulted in a Conservative government with a different emphasis. Concerned lest the Southern Rhodesian electorate reject federation, the new British government decided that, in spite of African opposition, the unification of the three territories was urgent if Southern Rhodesia was to be won to federation, a policy of racial partnership, and freedom from South African influence.

A conference was held therefore in 1952, and although it was boycotted by the African representatives from the Protectorates, it proceeded to produce a Draft Federal Scheme.² It proposed a federation of the two Rhodesias and Nyasaland, the two northern territories retaining their status as protectorates. The legislative powers open to the central government

¹Cmd. 8411/1951, Op.cit., Annex, paras. 6, 10.

²Cmd. 8573/1952, Op.cit.

were increased considerably over those recommended by the officials' conference in 1951, although residual powers, including matters most closely concerning the daily life of the Africans, were left to the territorial governments. The other major changes from the officials' scheme were the assignment to the central parliament of the power to fix the federal franchise and the weakening of the constitutional safeguards for African rights by abandoning the idea of a Minister for African Interests and by reducing the status and authority of the African Affairs Board. The membership of the central legislature provoked considerable discussion because of the problem of balancing both its racial and territorial composition. The solution arrived at followed, with a few modifications, the recommendations of the officials' report. In the unicameral Federal Assembly the settlers were to control a majority of seats from each territory and three-quarters of the total membership (sufficient to pass constitutional amendments), but Southern Rhodesia with 74 per cent of the federal settler population was to be limited to 17 of the total 35 seats.

A final constitutional conference met in London in 1953.¹ Once again the African representatives refused to participate. The conference decided upon revisions to the earlier Draft Federal Scheme in the light of the reports of

¹Cmd. 8753/1953, Op.cit.; Cmd. 8754/1953, Op.cit.

the Judicial, Fiscal and Civil Service Commissions, and further additions were made to the functions of the central government. Most important, in the face of settler pressure, the African Affairs Board was now converted from an independent commission into a standing committee of the Federal Assembly.

The federal scheme was then approved by referendum in Southern Rhodesia, by the Legislative Councils of the two Protectorates, and by the British Parliament. Huggins' efforts in the referendum campaign to assure the settlers that their security would not be endangered by federation further increased the African suspicion of it as a device to delay their advancement. Despite the continued opposition of the Africans of the northern territories and of the British Labour and Liberal parties, the British government pressed through the Rhodesia and Nyasaland Federation Act of 1953.¹ Convinced of the value of federation in facilitating economic development, racial partnership, and the creation of a viable nation as the buffer between Black Africa to the north and White Africa to the south, and believing that once federation was experienced the Africans would realize its value, the British government considered it urgent to take this last opportunity to include Southern Rhodesia in the federation before it turned to a demand for its own separate Dominion status.

¹

Rhodesia and Nyasaland Federation Act, 1953, (1 & 2 Eliz 2. ch. 30).

The Constitution of the Federation of Rhodesia and Nyasaland went into effect in September 1953.¹ The rationale of the division of powers was that matters primarily of interest to the settlers, especially economic affairs, were assigned to the central government while those primarily of interest to the Africans were left in the hands of the territorial governments. A distinctive feature, therefore, was the splitting of some subjects such as education and agriculture on purely racial grounds.² A precise and complete division of powers on racial lines was impracticable, however, and in fact many of the fields allotted to the federal government were multi-racial in scope. During the negotiations preceding federation, the settlers had continually pressed for increases in the central exclusive and concurrent powers, with the result that in the constitution as adopted central authority was extensive, including control of external affairs, the armed forces, the economy, communications, key development services, and the major sources of revenue.

The constitution included such orthodox federal features as a federal public service distinct from the territorial public services, a Federal Supreme Court, with exclusive

¹S.I. 1953, No. 1199, The Federation of Rhodesia and Nyasaland (Constitution) Order in Council, 1953, was made 1st August 1953, and went into effect 3rd September 1953.

²S.I. 1953, No. 1199, Annex, Constitution of Federation of Rhodesia and Nyasaland, Second Schedule, items 24, 30.

jurisdiction to decide inter-government legal disputes and powers to interpret the constitution, and a rigid procedure for constitutional amendment. The actual normal amendment procedure was unusual, however, in that it was the British government which acted on behalf of the territories in ratifying amendments.¹ During the ten years, any alterations to the division of powers, however, required the prior consent of the territorial legislatures.

A unicameral Federal Assembly was created along the lines agreed in 1952. About a quarter of its members were Africans or represented African interests in the territories, and this was considered a major concession by the Southern Rhodesians. On the other hand, the Southern Rhodesian settlers who constituted 7 per cent of the population of that single territory had, under the existing franchise, control over 17 of the 35 central legislators, thus fostering the distrust of the Africans in the northern territories. Moreover, the power to fix the franchise was assigned to the Federal Assembly and it was the use made of this authority by the settlers in 1957-8 that resulted in so much controversy.

The constitution did, however, include many features intended to ease African anxieties. Among these were the

¹Constitution, art. 97. Normally support of two-thirds of the members of the Federal Assembly and assent by Her Majesty was required for constitutional amendment. If within 60 days a territorial legislature or the African Affairs Board objected to the bill, Her Majesty's assent had to be by order in council after the draft had been before the British Parliament for 40 days. See Chapter 12.

specific enunciation in the preamble of 'partnership' as a goal of federation, the continuance of Protectorate status for Northern Rhodesia and Nyasaland, the requirement of the assent of the British government to constitutional amendments, the prohibition against the central government acquiring land for settling immigrants, the prohibition against the denial of employment in the public service solely on the grounds of race,¹ and establishment of a special standing committee of the Federal Assembly, the African Affairs Board, with authority to request that legislation of a 'differentiating' nature be reserved for assent by the British government.²

In the first federal elections Sir Godfrey Huggins' Federal Party won a sweeping victory, gaining 24 of the 26 ordinary seats for elected members. First under Huggins and then after 1956 under Welensky as prime ministers, this party continued to dominate central politics, for in 1958 it again triumphed in the federal elections, securing 44 of the 53 'elected' seats, with the support of the predominantly white electorate.³

The Federation had been imposed despite the protests of the majority of the articulate Africans in the hope that, once experienced, its benefits would be recognized by the Africans.

¹Constitution, art. 40(2).

²Constitution, arts. 67-77.

³Africans formed less than 3 per cent of the total federal electorate in this election, in part due to the boycotting of the election by many African groups.

In the early years after its formation there were some signs that federation was indeed resulting in positive achievements. The first seven years saw "a remarkable, if perhaps uneven, economic advance".¹ Some critics have argued that federation itself was not responsible for this economic expansion, and that the economic benefits of this advance were not equitably distributed among the territories,² but the Monckton Commission was sufficiently impressed to consider this the main advantage and achievement of federation.³ There were also some advances in the lowering of the colour bar in land apportionment, industrial employment, the government services, social services and public amenities. But while the settlers considered these major concessions, the meagre nature of these measures and the strength of settler opposition to them did much to undo their value in winning the confidence of the Africans.⁴

¹ Cmnd. 1148/1960, Report of the Advisory Commission on the Review of the Constitution of Rhodesia and Nyasaland (Monckton), (London), para. 52.

² Hazlewood and Henderson, Nyasaland, The Economics of Federation (Oxford, 1960), esp. pp. 88-91; W.J. Barber, 'The Economic Argument' in C. Leys and C. Pratt (eds.), A New Deal in Central Africa (London, 1960), chs. 7, 8; S. Williams, Central Africa: The Economics of Inequality (London, 1960), chs. 5-7.

³ Cmnd. 1148/1960, Op.cit., ch. 4.

⁴ Even G.H. Baxter, who as Assistant Secretary of State for Commonwealth Relations had been chairman of the officials' Conference in 1951, and who was one of the Federation's staunchest friends in Britain, was in 1959 critical of the 'very slow' progress towards racial partnership in Southern Rhodesia. See A.J. Hanna, The Story of the Rhodesias and Nyasaland (London, 1960), p. 272.

Despite these positive achievements the Federation failed to achieve what the British government had expected, for instead of advancing peacefully towards a maturing racial partnership, it produced the opposite: deteriorating race relations, discontent, disturbances, and instability. The Federal Government, dependent on a predominantly white electorate, was unable to concentrate on conciliating the Africans, for it had to protect its own right flank against those, such as the supporters of the Dominion Party, who charged it with jeopardizing white supremacy. As a result, the failure to take any 'significant' steps 'to demonstrate the reality of racial partnership as the basis of Federation',¹ the lack of adequate African representation in the central government, the dominant role of Southern Rhodesia (apparent in the majority it held in the central cabinet, in the choice of Salisbury as the federal capital, and the choice of the Kariba site for the major hydro-electric development), the efforts of the settler dominated central government to expand its authority and to influence the negotiations for the revision of territorial constitutions, the relative slowness of African political advance in the territories, and the increased flood of European immigration, all served to confirm the fears of the Africans that federation was a barrier rather than a means to their political advancement. Thus, "the opposition to

¹ Cmnd. 1148/1960, Op.cit., para. 34.

Federation which...was strong at the time Federation was introduced...gathered further strength by the African dis-appointment in the manner of its operation".¹ The hope that white altruism and black patience would jointly make a success of federation was proving illusory.

The turning point came when developments occurred during 1957-9 which turned the sullen suspicions of the northern Africans about the true purpose of federation into a hardened certainty. The settler demand for an early end to 'Whitehall control' and the grant of Dominion Status and the British promise to consider this at the 1960 review of the constitution, the passage of the Constitution Amendment Act, 1957, and the Electoral Act, 1958, which were ruled 'differentiating measures' by the African Affairs Board but approved by the British government,² the federal intervention on the side of illiberality in the territorial constitution-making in Northern Rhodesia, and the rejection of Todd as premier in Southern Rhodesia because he was 'ultra-liberal', all helped Africans to believe the worst. Federation was exposed in their eyes as a device for settler control and the African Affairs Board and the British Government's reserved powers shown to be ineffective safeguards.

¹ Ibid., para. 41.

² Cmnd. 298/1957, Constitution Amendment Bill, 1957 (London); Cmnd. 362/1958, Electoral Bill, 1958 (London).

Federation was now fully discredited among the Africans of the Protectorates and the anger, bitterness and frustration of the African nationalists was focussed upon federation. Throughout 1958 tension mounted in the three territories. In Nyasaland, the Congress party had reached a stage in which it felt there was no constitutional way in which to make its views effective and with the return of Dr. Hastings Banda was showing a new militancy. The situation deteriorated so rapidly that in February and March 1959, emergencies were declared in Southern Rhodesia and Nyasaland, the Zambia Congress was declared illegal in Northern Rhodesia, African leaders arrested, and in Nyasaland a 'police state' imposed with the aid of federal troops.¹ The fears of the Nyasaland Africans that federation would enable white Southern Rhodesian troops to impose settler rule had come true, and the baton charges, the bloodshed, the burning of houses, the searching of villages, the collective fines and the confiscation of implements did not make the people of Nyasaland like the Federation any better.

Although not immediately apparent, after the emergency the position of the British government began to shift towards an acceptance of the need to revise the federal structure considerably, in spite of settler opposition. In 1959 an

¹ Cmnd. 814/1959, Report of the Nyasaland Commission of Inquiry (Devlin), (London), esp. paras. 2, 179-186, 254-257, 258, 275-286.

advisory commission under Lord Monckton, composed of nominees of the territorial, federal and British governments was set up to make recommendations for the constitutional review conference due to be held late in 1960.¹ The commission pointed to the economic advantages and achievements of federation but in the light of a widespread, sincere, and 'almost pathological' dislike of Federation among the Africans of the two Northern territories, concluded that "Federation cannot, in our view, be maintained in its present form."²

The majority of the commission recommended a drastic revision of the federal structure. Among its recommendations was the suggestion that in order to make the Federal Assembly representative of the broad mass of African and European opinion, seats in the Assembly should without delay be equally divided between Africans and Europeans and the franchise revised.³ In order to remove the fear of federation as a barrier to political advance, immediate and substantial advances in the territorial constitutions towards self-government were advised. Other recommendations included the rejection of the division of powers on racial lines, the transfer of considerable functions and finances to the territorial governments, the strengthening of the machinery for inter-governmental co-operation, and the improving of existing safeguards and

¹Article 99 of the constitution had specified such a conference between 7 and 9 years after the commencement of the federal constitution.

²Cmnd. 1148/1960, Op.cit., paras. 27, 41, 49.

³Ibid., ch. 6.

the addition of new ones, including a Bill of Rights and Councils of State, the latter acting as a barrier to discriminatory legislation.¹ Since the term 'federation' had become to many Africans a term of abuse, the commission also concluded that the federal association, in its new form, must start with a new name. One of the commission's most controversial decisions was that the new federal structure should be 'on approval', willingness to try the new scheme being obtained by means of a right of secession after a trial period.²

The review conference met late in 1960 but the real work of reviewing the federal constitution was postponed. In the meantime, the British government undertook a programme of constitutional advances in all three territories. The result in Nyasaland was the triumph in 1961 of the Malawi Congress Party, led by Dr. Hastings Banda, an avowed advocate of secession, when it won control of the territorial legislature and executive council. Nyasaland's continued membership in the Federation now depended upon the decision of its African leaders. Soon afterwards constitutional advances in Northern Rhodesia also brought into power African nationalist leaders committed to secession. During the period between 1960 and 1963 the Conservative Government in Britain gradually shifted towards a realization that the federal experiment had failed

¹Ibid., ch. 12.

²Ibid., ch. 16.

and should therefore be terminated. Despite a determined rearguard action by the pro-federal settlers, bitter at the gradual withdrawal of British support, the handwriting was on the wall when the imperial government agreed late in 1962 to permit Nyasaland to secede. When the African government of Northern Rhodesia likewise insisted upon its own separate independence, Britain proceeded to dissolve the federation on 31 December 1963.

6. The West Indies Federation

During the seventeenth, eighteenth and early nineteenth centuries, Britain acquired by settlement and by conquest from the Spanish, French, and Dutch a large number of West Indian islands. In the eighteenth century these West Indian colonies were the most important part of the British Empire, far outranking the colonies of the North American mainland in economic and strategic importance. The form of government generally in operation was 'the old representative system', the representative institutions being dominated by the white oligarchy. In the nineteenth century, however, when economic and social difficulties followed the drop in sugar prices, soil exhaustion, and the abolition of the slave trade and slavery, the constitutional structure of nearly all the islands was altered to non-representative Crown Colony Government. It was only in the twentieth century that representative government was re-introduced, this time advancing by gradual stages to a democratic basis.¹

During the nineteenth and first half of the twentieth centuries, there were numerous official and unofficial proposals for federating the West Indian islands.² The various proposals differed widely in the scope of the territories

¹Election by universal adult suffrage was finally achieved in Jamaica in 1944, in Trinidad in 1946, and in Barbados, the Windwards and the Leewards in 1951.

²L. Braithwaite, 'Progress Toward Federation, 1938-1956', Social & Economic Studies, Vol. 6, No. 2, June 1957, pp. 133-137.

to be included, in the justifications offered for federal union and in the degree of power and influence to be conferred on the central government. Most of these schemes were characterized by a Benthamite preoccupation with the administrative and economic advantages of federal association and therefore failed to stir public imagination. This coupled with the difficulty and cost of transportation between the scattered islands, resulted in little being achieved in the direction of a federation of all British Caribbean colonies.

Nevertheless, some projects for limited federations and unions within the British West Indies did actually come into operation. At various times from the seventeenth century on, the Leeward Islands and the Windward Islands were grouped under common governors, and a federal constitution was enacted for the Leewards in 1705 but soon lapsed. In 1871 a new federation of the Leewards was achieved, although a few years later the projected wider federation of the Leewards, Windwards and Barbados was abandoned when it provoked the "Confederation Riots" in Barbados. The Leeward Islands federation, consisting of Antigua, St. Kitts, Nevis, Dominica, Montserrat and the Virgin Islands lasted right up to 1956. The federation was of a very loose order, the central legislative and financial powers being very limited, and the central legislature, composed of delegates from the local legislatures, being inhibited from developing any power that would rival those of the component units. The result was "a weak central government involving additional expenditure

to no effectual purpose" and it was the target of much criticism throughout its existence.¹ This lesson, it would appear, was not, however, sufficiently taken into account by those planning a wider federation after 1945.

During the nineteenth century several inter-colonial unions were also undertaken in the West Indies. Most significant perhaps was the federation of Tobago with Trinidad in 1887, followed by the complete amalgamation in 1898, for the fate of Tobago did not pass unnoticed in the smaller islands of the Caribbean. Other unions of West Indian islands were the bringing of the diminutive Cayman Islands and the Turks and Caicos Islands under the Jamaican legislature in 1863 and 1873, and the uniting of St. Kitts and Nevis as a single presidency within the Leeward Islands federation in 1882.

For a time British Honduras was under the jurisdiction of the Governor of Jamaica, but it became a separate colony in 1884. An inter-colonial link of a different sort was the West Indian Appeal Court set up in 1919.

On the issue of a wider British Caribbean federation, however, there was little progress before 1945. Indeed, the Closer Union Commission of 1933 had reported unfavourably and the West India Royal Commission of 1938-9 had advised caution. Both pointed to the strength of local pride and to the difficulties of communication and suggested that public opinion in the British West Indies was not yet ripe for

¹Braithwaite, Op.cit., pp. 135, 144.

federation, although the latter commission suggested that British West Indian unity was the ideal to which policy should be directed.¹

Events during the war 1939-1945, however, fostered the growth of opinion in favour of political federation in the West Indies. One of the most important developments was the extension of inter-island communication by air, facilitating contact between island leaders on a scale previously impossible. During the war, regional organization of one kind and another came into being and these led to a growing appreciation of the value of a regional approach to the solution of social and economic questions. The ferment of the second world war affected ways of thought in both the imperial power and the West Indian peoples. The British government set upon a policy of implementing independence for the colonies but considered that in the Caribbean this would only be practicable if the islands were federated.² Among the people of the islands, the enunciation of the Atlantic Charter and the establishment of the American bases without reference to West Indian opinion fostered West Indian nationalism. The issue of West Indian unity was brought into focus late in the war by meetings of the Associated Chambers of Commerce and the West Indian Conference in Barbados in 1944 and by the newly

¹Cmd. 4383/1933, West Indian Closer Union Commission Report (London), pp. 1-9; Cmd. 6607/1945, West India Royal Commission (1938-9) Report, (Moyne), (London), pp. 326-8.

²Cmd. 7120/1947, Closer Association of the British West Indian Colonies (London), App. I, paras. 1-3.

formed Caribbean Labour Congress which at its first session in 1945 demanded a conference for the purpose of considering West Indian federation.

Early in 1945, when it was clear that the war would soon be over, Mr. Oliver Stanley, the Secretary of State for the Colonies, in a dispatch to all the Governors of the British Caribbean colonies, initiated discussions on two programmes of federation: one for federating the Windward and Leeward Islands, and the other a larger plan for linking all the British Caribbean colonies.¹ The smaller federation was not looked upon as an alternative but rather, as the Moyne Commission had suggested, as an important 'experimental' step towards the wider federation. Following a conference of delegates from the Windward Islands in 1945, the Colonial Secretary submitted in 1946 proposals for the amalgamation of the Windwards and Leewards under "a strong central government with wide powers over all matters of general administration".² A conference on closer union of the Windward and Leeward Islands, held at St. Kitts early in 1947, agreed that a central government should be established, with a wide range of powers

¹Cmd. 7120/1947, Op.cit., App. I.

²St. Vincent Government Gazette Extraordinary, Vol. 79, No. 21, March 21, 1946, (Date of despatch, March 14), Despatch, p. 7(a). See also Braithwaite, Op.cit., pp. 140-1. In his despatch, the Secretary of State pointed to the experience of the Leewards as indicating the disadvantages of a federation with weak central government.

assigned to it, and a legislative council directly elected by the people, thus differing greatly from the existing Leeward Islands federation.¹ Nevertheless, the persistence of strong insular feeling was evident for the delegates were clearly in favour of an orthodox federation instead of amalgamation.

Although the Moyne Report had suggested that the question of a wider British West Indian federation be deferred until experience with the Windwards-Leewards federation had been obtained, Mr. Creech-Jones, then Secretary of State for the Colonies, suggested in 1947 that in view of the support already shown for the wider federation in all the British Caribbean colonial legislatures except the Bahamas when debating Stanley's despatch, that there was no need to postpone a conference to consider the question. Accordingly, in September 1947 a conference on closer association of the British West Indian colonies was held under his chairmanship at Montego Bay.² After a general discussion of the issues involved in federation, the conference agreed on "a federation in which each constituent unit retains complete control over all

¹Leeward Islands, Gazette, Supplement, Feb. 3rd, 1947, Minutes of Conference on Closer Union of Windward and Leeward Islands held at St. Kitts on Saturday, 1st February, 1947. See also Braithwaite, Op.cit., pp. 142-3.

²Cmd. 7291/1948, Conference on Closer Association of B.W.I. Colonies, Report (London); Col. No. 218/1948, Conference on Closer Association of B.W.I. Colonies, Proceedings (London).

matters except those specifically assigned to the federal government".¹ The conference also agreed upon the establishment of machinery to work towards this aim. A Standing Closer Association Committee, composed of delegates from each of the colonial legislatures was to consider and report on the form the federal constitution should take, special commissions were to examine the problems of a customs union and of the unification of the public services, and a small regional economic committee was to study and report on matters of common economic significance and to advise territorial governments on economic policy.² So general was the agreement that after the Montego Bay Conference hopes ran high and federation was regarded as imminent. But while there had been general support for the resolutions of the conference, its proceedings indicated some of the probable difficulties in store. The strength of insular particularism was indicated by the resolution that the political development of the individual territories "must be pursued as an aim in itself, without prejudice and in no way subordinate to progress towards federation".³ The initial reluctance during the proceedings of

¹Cmd. 7291/1948, Op.cit., para. 15, Resolution 1.

²Resolutions 6, 7, 14, 9. A shipping committee, a central organization of primary producers, and a British Caribbean Trade Commissioner Service were also to be set up immediately (Resolutions 3, 4, 5).

³Resolution 2.

the Jamaicans, and especially of Bustamante, to more than functional co-operation, for fear that federation would retard Jamaica's progress to self-government, indicated Jamaican doubts in spite of their support at the end of the conference for its conclusions. The hesitance of the representatives of the mainland British Caribbean territories, British Guiana and British Honduras, foreshadowed their later refusal to join the federation when it was formed.

The decision to proceed with the British Caribbean federation without awaiting the results of the narrower 'experimental' federation in the Windwards and Leewards raised the problem of the role of the smaller federation within the larger one. In their proposals, the Colonial Secretaries had suggested that the Windwards-Leewards colony might be one unit in the wider federation. The St. Kitts proposals had, however, assigned to the smaller federal government powers and revenues which were likely to be those of the central government in the wider federation. In the end, the combination of insularity and desire to participate in the larger federation led to the abandonment of the smaller middle-tier federation, for the islands preferred to participate in the British Caribbean federation as individual units. Indeed, the problem evolved into one of dissociation, the existing Leeward Islands federation being defederated in order that its components might become separate units in the larger federation.¹

¹Leeward Islands Act, 1956, (4 & 5 Eliz. 2, ch. 23).

Two years after the Montego Bay Conference the Standing Closer Association Committee submitted its proposals on the form the British Caribbean federal constitution should take.¹ It recommended a division of powers patterned on the form of the Australian model, with federal and concurrent fields of legislation enumerated and all residual powers remaining with the territorial governments. In view of the existing social and economic diversity and the strength of local political and other traditions, the list of 'federal' functions was limited chiefly to external relations and inter-territorial communications.² The gradual accretion of central functions "as the region grows together" was envisaged, however, and to make this possible provisions enabling the territories to delegate powers to the central government were suggested.³ The S.C.A.C. insisted that for effective federal government, the central government must have its own independent source of revenue. Since it considered the establishment of a customs union as "the foundation of a federal structure", it suggested that customs was the appropriate major source of central revenue.⁴ Because, however, customs revenue would

¹Col. No. 255/1950, Standing Closer Association Committee Report (Rance) (London).

²Ibid., paras. 21, 24; App. 5, paras. 6-7. Many of the suggested activities of the central government were to be functions of an advisory nature such as those previously performed by the Development and Welfare Organization (ibid., para. 27).

³Ibid., para. 28.

⁴Ibid., para. 30.

exceed for many years the central requirements and alternative sources of territorial revenue were limited, it was proposed that 75% of the net customs receipts should be returned unconditionally to the territories in proportion to their consumption of dutiable goods. Thus the central government was to be left financially weak also.

The Report advocated a bicameral central legislature in order that the Senate, consisting wholly of nominated members, might represent the equality of the constituent units and serve as a revisionary house. The House of Assembly was to be elected by universal suffrage and to represent the territories in something like proportion to population, except that the representation of the larger territories was considerably reduced to prevent Jamaica, with nearly half the British Caribbean population, dominating the house. The central executive was to be a Council of State in which the Prime Minister would be elected by the House of Assembly, an interesting innovation in British constitutional practice.

Other recommendations included the setting up of a Supreme Court on the Australian model, the establishment of separate federal and territorial civil services, the placing of the capital in Trinidad, and the reliance on British orders in council for constitutional amendments. The committee also examined the cost of federation in order to contradict

exaggerated ideas that had become current,¹ and recommended certain forms of pre-federal joint action, although it insisted that these were no substitute for political federation. During 1949 and 1950 the Holmes Commission also reported in favour of immediate unification of the public services² and the McLagan Commission reported that a customs union, whether preceding or accompanying political federation, was both practically and economically desirable.³

After the publication of the S.C.A.C. Report, discussions became involved and difficult as the special interests, ambitions and fears in each island came to the fore. Parochialism grounded deep in generations of history continued to exert itself. A complicating factor was the introduction of adult suffrage and rapid constitutional progress in the individual islands after 1944, making some political leaders eager to consolidate their political gains and fearful that

¹ Ibid., paras. 107-112. Concern about the additional cost of federation was a recurring theme in the development of the West Indian Federation, and subsequent reports presented revised cost estimates, to contradict the continued fears of the cost of federation. See Development and Welfare Organization in the W.I., Financial Aspects of Federation. Report (Seel) (Bridgetown, 1953), paras. 4-5, and Annexes 2, 3, 4; Cmd. 9618/1955, The Plan for a British Caribbean Federation Report of the Fiscal Commissioner (Caine), (London), paras. 18-50.

² Col. No. 254/1949, Commission on the Unification of the Public Services Report (London), esp. para. 157.

³ Col. No. 268/1950, Commission on the Establishment of a Customs Union. Report (London), esp. para. 135.

The first part of the report deals with the general situation of the country and the progress of the work during the year. It is followed by a detailed account of the various expeditions and the results obtained. The report concludes with a summary of the work done and a list of the names of the persons who have taken part in it.

The second part of the report contains a list of the names of the persons who have taken part in the work, together with a brief description of their duties. This is followed by a list of the names of the persons who have been appointed to various positions, and a list of the names of the persons who have been promoted.

The third part of the report contains a list of the names of the persons who have been appointed to various positions, and a list of the names of the persons who have been promoted. This is followed by a list of the names of the persons who have been appointed to various positions, and a list of the names of the persons who have been promoted.

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in federation they might lose them. Moreover, the S.C.A.C. proposals for the central government and especially the central executive represented a Crown Colony constitution of an advanced type, but slightly less advanced than the constitutions already in force in several territories. Thus for the politicians who hoped for a speedy advance towards Dominion Status through federation, the proposals were a distinct disappointment. The S.C.A.C. Report was debated in the legislatures of the various islands. Jamaica, a thousand miles from the other islands and more self-contained, was at first doubtful and Barbados, fearful of Jamaican domination, unenthusiastic. But eventually all the islands, with the exception of the Virgin Islands, accepted federation in principle, although some proposed modifications to the S.C.A.C. scheme. The mainland territories, British Guiana and British Honduras, on the other hand, fearing the possibility of being swamped by the surplus population from the islands, conscious of their own undeveloped resources, and cherishing dreams of continental destinies, both declared themselves against participation.

As a result of the problems and disagreements which had emerged following the publication of the S.C.A.C. Report, constitution-making proved a long drawn-out and difficult process. Between 1953 and 1956 three constitutional conferences were held and four commissions appointed to examine

particular aspects of federation.¹ The major issues of contention were the assignment of finances, and particularly customs,² the power to levy income tax, and the control of external public borrowing, to the central government; the assertion of the principle of freedom of internal movement which aroused Trinidad fears of migration from the smaller islands; the permitting of simultaneous membership in central and territorial legislatures; the placing of the constitutional amending power in the West Indian legislatures or the British government; the site of the federal capital; and the 'dependent' character of the central government. Not infrequently decisions made at earlier conferences were reversed at later ones.³

¹Cmd. 8837/1953, Report by the Conference on West Indian Federation, 1953 (London); Col. No. 315/1955, Report of the Conference on Movement of Persons within a British Caribbean Federation (London); Cmd. 9733/1956, Report by Conference on British Caribbean Federation (London); Cmd. 9618/1955, Report of the Fiscal Commissioner (Caine), (London); Cmd. 9619/1955, Report of the Civil Service Commissioner (Blood), (London); Cmd. 9620/1955, Report of the Judicial Commissioner (Smith), (London); Col. No. 328/1956, Report of the British Caribbean Federal Capital Commission (Mudie), (London). A Standing Federation Committee established by the 1956 conference, approved the final draft of the constitution and settled certain decisions of detail regarding the federal civil service, the judicial organization, and the site of the federal capital that were still outstanding after the conference.

²Jamaica was particularly sensitive on the issue of customs union because such a large proportion of its revenue was derived from its high tariffs.

³For instance, decisions made at the 1953 conference concerning arrangements for internal free movement, customs union, dual membership in legislatures, constitutional amendment procedure and site of the federal capital were reversed later.

The compromises arrived at on the issues of central control of free internal movement, customs union and income tax were similar: "an agreement in principle and a postponement of its realization".¹ In the case of the restriction of internal movement, the ultimate control would after five years lie with the central government, but until then the territories were left with some initiative. Similarly, although the concurrent power to levy income and profits taxes and customs and excise duties was recognized, for the first five years central revenue was limited to the profits on the issue of currency, a mandatory levy on the territorial governments, and receipts from certain scheduled customs and excise duties. The net effect was that, at least for the initial five years, the central government would be even weaker than under the S.C.A.C. recommendations. On the issues of simultaneous membership in legislatures, and procedure for constitutional amendment, the 1956 conference reverted to the S.C.A.C. proposals in prohibiting the former and leaving the latter to British orders in council. The demand for a less "colonial" central government resulted in alterations to the membership of the Council of State and the powers of the Governor-General, although the Governor-General still retained considerable discretionary power and the British government held reserved powers. Disagreement over the federal capital site

¹M. Ayearst, The British West Indies (London, 1960), p. 236.

necessitated a special commission, but its recommendation of Barbados in terms offensive to West Indian nationalism resulted in the Standing Federation Commission choosing Trinidad instead.¹ For some time the United States refused to give up its naval base on that site and Port of Spain served as the temporary federal capital, but later the United States agreed to vacate the area required for the federal capital by the end of 1962.

In January 1958, after thirteen years of negotiations, the constitution of the West Indies Federation finally came into affect.² As implemented, the federation consisted of ten islands or groups of islands with wide variations in size, population and wealth. Jamaica alone contained 52 per cent of the federal population, 58 per cent of the total area, and 42 per cent of the total revenue, while Trinidad held a further 27 per cent of the population, 26 per cent of the area, and 42 per cent of the revenue, representing more than the eight other territories combined. The chief characteristic of the division of powers was the extreme weakness of the central government in legislative authority and financial resources. Indeed the central government was little more than an improved version of the pre-federal

¹Col. No. 328/1956, Report of the British Caribbean Federal Capital Commission (London).

²British Caribbean Federation Act, 1956 (4 & 5 Eliz 2. ch. 63); S.I. 1957, No. 1364, The West Indies Federation Order in Council 1957.

Regional Economic Committee. The list of exclusive central powers was niggardly, although the more extensive concurrent list provided scope for a transition later to greater centralization. The central government's lack of finances dramatized its weakness: with one-tenth the revenue of either Trinidad or Jamaica, it would hardly be in a position to achieve the hoped for economic transformation. The West Indies Federation was also unique among modern political federations in commencing without a customs union, the implementation of this being delayed, awaiting the report of a Commission on Trade and Tariffs.

The first federal elections were held early in 1958, and in these the Federal Labour Party, a loose alliance of island socialist parties, emerged narrowly victorious. As its major leaders, Manley and Williams chose to remain as the premiers of Jamaica and Trinidad, Grantley Adams of Barbados became the federal prime minister. The opposition Democratic Labour Party, a heterogeneous coalition of parties, which claimed to be anti-socialist and opposed to undue federal encroachments over the units, did better than expected, capturing a majority of the federal seats in both Trinidad and Jamaica. As a result, in the early years of the federation the two largest territories were both seriously under-represented in the central executive.

The achievement of federation did not end disagreements over the federal structure. The constitution had deferred the implementation of the customs union, the central right

to tax income and profits, and central control of internal movement, and had also provided for a general review of the constitution within five years, thus encouraging continued contention.¹ In the discussions on these issues, Trinidad emerged as the champion of central power and Jamaica as the proponent of the view that the central government should have no more power than necessary for its recognition as an international entity. The key issue was whether the central government should have powers of direct taxation and control of economic development. The Jamaican government had undertaken its own programme of economic development and, attributing its rapid expansion to these efforts, was determined to prevent the central government from interfering with the Jamaican economy. It, therefore, opposed federal control of income and profits taxes and argued for a longer period than that recommended by the Trade and Tariffs Commission within which to accommodate its existing high protective tariffs to a customs union. Jamaicans, realizing also that without control of the federal legislature, their economy might be placed at the mercy of the federation, demanded that they should receive representation in the House of Representatives proportional to their population, and insisted that this problem be settled before the others were dealt with.

¹

Constitution, art. 118.

These issues came to a head in a long series of inter-governmental negotiations beginning in 1959 and culminating in the constitutional review conference in June 1961.¹ The outcome was a continuous, if often unwilling, dance to the Jamaican tune and the result an emasculated federal structure. Because it was feared that a federation without Jamaica could not be viable, concessions were made on most issues. Jamaican representation in the House of Representatives was increased, direct taxation and the control of economic development were placed outside federal competence, any transfer of these to federal control being in effect subject to Jamaican veto, and the introduction of the customs union was to be phased over nine years.²

In spite of these concessions and the promise of federal independence in May 1962, the Federation failed, however, to hold Jamaica. Premier Manley, a professed supporter of federation, had announced early in 1960 that Jamaica would hold a referendum on the issue of secession. Conceived as a weapon both to extort concessions for Jamaica in the constitutional bargaining and to undermine the Jamaican critics of federation, it succeeded in achieving the former, but backfired in the latter, for when the referendum was held in September 1961, a majority of Jamaicans voted against

¹ Cmnd. 1417/1961, Report of the West Indies Constitutional Conference, 1961 (London).

² Cmnd. 1417/1961, Op.cit., paras. 11, 20, 26.

federation. Faced with this expression of Jamaican opinion, the British government quickly agreed to permit Jamaica to secede and seek its own independence.¹ With the withdrawal of Jamaica, the Trinidad Government decided to seek its own independence also. Thereupon, the British Government decided simply to dissolve the federation.²

Handicapped by the failure to give the central government effective power and by the parochialism of its leaders, the West Indies Federation, which had been floundering unhappily since its formation, finally sank altogether and was dissolved on the very day it was to have achieved independence.

¹Cmnd. 1638/1962, Report of the Jamaica Independence Conference (London).

²U.K. House of Commons, Debates, Vol. 653, 6 February 1962, cols. 230-5; Vol. 656, 26 March 1962, cols. 849-940.

Appendix 6

SELECTED CONSTITUTIONAL PROVISIONS RELATING TO

LANGUAGE OR CULTURE

1. The Constitution of India (adopted 1950)

Fundamental Rights:

Article 15.

- (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
- (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to -
 - (a) access to shops, public restaurants, hotels and places of public entertainment; or
 - (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds dedicated to the use of the general public.
- (3) Nothing in this article shall prevent the State from making any special provision for women and children.
- (4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.¹

Article 16.

- (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
- (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

¹Added by the Constitution (First Amendment) Act, 1951, s. 2.

In its application to the State of Jammu and Kashmir, reference to Scheduled Tribes in cl. (4) of art. 15 shall be omitted.

Article 16.

- (3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office (under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory)¹ prior to such employment or appointment.²
- (4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.
- (5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

Article 25.

- (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.
- (2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law -
 - (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
 - (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I. - The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

¹Subs. by the Constitution (Seventh Amendment) Act, 1956, s.29 and Sch., for "under any State specified in the First Schedule or any local or other authority within its territory, any requirement as to residence within that State".

²In Cl. (3) of art. 16, the reference to the State shall be construed as not including a reference to the State of Jammu and Kashmir.

Article 25.

Explanation II. - In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

Article 26.

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right -

- (a) to establish and maintain institutions for religious and charitable purposes;
- (b) to manage its own affairs in matters of religion;
- (c) to own and acquire movable and immovable property; and
- (d) to administer such property in accordance with law.

Article 27.

No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

Article 28.

- (1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.
- (2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.
- (3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

Article 29.

- (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

Article 29.

- (2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

Article 30.

- (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
- (2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

Directive Principles:

Article 46.

The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

Parliament:

Article 120.

- (1) Notwithstanding anything in Part XVII, but subject to the provisions of article 348, business in Parliament shall be transacted in Hindi or in English:
Provided that the Chairman of the Council of States or Speaker of the House of the People, or person acting as such, as the case may be, may permit any member who cannot adequately express himself in Hindi or in English to address the House in his mother tongue.
- (2) Unless Parliament by law otherwise provides, this article shall, after the expiration of a period of fifteen years from the commencement of this Constitution, have effect as if the words "or in English" were omitted therefrom.

The State Legislature:

Article 210.

- (1) Notwithstanding anything in Part XVII, but subject to the provisions of article 348, business in the Legislature of a State shall be transacted in the official language or languages of the State or in Hindi or in English:
Provided that the Speaker of the Legislative Assembly or Chairman of the Legislative Council, or person

acting as such, as the case may be, may permit any member who cannot adequately express himself in any of the languages aforesaid to address the House in his mother-tongue.

- (2) Unless the Legislature of the State by law otherwise provides, this article shall, after the expiration of a period of fifteen years from the commencement of this Constitution, have effect as if the words "or in English" were omitted therefrom.

Special Provisions Relating to Certain Classes:

Article 330.¹

- (1) Seats shall be reserved in the House of the People for -
 - (a) the Scheduled Castes;
 - (b) the Scheduled Tribes except the Scheduled Tribes in the tribal areas of Assam; and
 - (c) the Scheduled Tribes in the autonomous districts of Assam.
- (2) The number of seats reserved in any State (or Union territory)² for the Scheduled Castes or the Scheduled Tribes under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that State (or Union territory)² in the House of the People as the population of the Scheduled Castes in the State (or Union territory)² or of the Scheduled Tribes in the State (or Union territory)² or part of the State (or Union territory)², as the case may be, in respect of which seats are so reserved, bears to the total population of the State (or Union territory).²

Article 331.³

Notwithstanding anything in article 81, the President may, if he is of opinion that the Anglo-Indian community is not adequately represented in the House of the People, nominate not more than two members of that community to the House of the People.

¹In its application to the State of Jammu and Kashmir, in art. 330, references to the "Scheduled Tribes" shall be omitted.

²Ins. by the Constitution (Seventh Amendment) Act, 1956, s.29 and Sch.

³Arts. 331 and 332 shall not apply to the State of Jammu and Kashmir.

Article 332.¹

- (1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes, except the Scheduled Tribes in the tribal areas of Assam, in the Legislative Assembly of every State ² * * * .
- (2) Seats shall be reserved also for the autonomous districts in the Legislative Assembly of the State of Assam.
- (3) The number of seats reserved for the Scheduled Castes or the Scheduled Tribes in the Legislative Assembly of any State under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State or part of the State, as the case may be, in respect of which seats are so reserved, bears to the total population of the State.
- (4) The number of seats reserved for an autonomous district in the Legislative Assembly of the State of Assam shall bear to the total number of seats in that Assembly a proportion not less than the population of the district bears to the total population of the State.
- (5) The constituencies for the seats reserved for any autonomous district of Assam shall not comprise any area outside that district except in the case of the constituency comprising the cantonment and municipality of Shillong.
- (6) No person who is not a member of a Scheduled Tribe of any autonomous district of the State of Assam shall be eligible for election to the Legislative Assembly of the State from any constituency of that district except from the constituency comprising the cantonment and municipality of Shillong.

1

Arts. 331 and 332 shall not apply to the State of Jammu and Kashmir.

2

The words and letters "specified in Part A or Part B of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch.

Article 333.¹

Notwithstanding anything in article 170, the Governor 2 * * *
of a State may, if he is of opinion that the Anglo-Indian
community needs representation in the Legislative Assembly
of the State and is not adequately represented therein,
nominate such number of members of the community to the
Assembly as he considers appropriate.

Article 334.³

Notwithstanding anything in the foregoing provisions of this
Part, the provisions of this Constitution relating to -

- (a) the reservation of seats for the Scheduled Castes and
the Scheduled Tribes in the House of the People and in
the Legislative Assemblies of the States; and
- (b) the representation of the Anglo-Indian community in the
House of the People and in the Legislative Assemblies
of the States by nomination,

shall cease to have effect on the expiration of a period of
ten years from the commencement of this Constitution:

Provided that nothing in this article shall affect any
representation in the House of the People or in the Legis-
lative Assembly of a State until the dissolution of the then
existing House or Assembly, as the case may be.

Article 335.³

The claims of the members of the Scheduled Castes and the
Scheduled Tribes shall be taken into consideration, consis-
tently with the maintenance of efficiency of administration,
in the making of appointments to services and posts in con-
nection with the affairs of the Union or of a State.

1

Art. 333 shall not apply to the State of Jammu and Kashmir.

2

The words "or Rajpramukh" omitted by the Constitution
(Seventh Amendment) Act, 1956, s. 29 and Sch.

3

In its application to the State of Jammu and Kashmir, in
arts. 334 and 335, references to the State or the States
shall be construed as not including references to the State
of Jammu and Kashmir.

Article 336.¹

- (1) During the first two years after the commencement of this Constitution, appointments of members of the Anglo-Indian community to posts in the railway, customs, postal and telegraph services of the Union shall be made on the same basis as immediately before the fifteenth day of August, 1947.

During every succeeding period of two years, the number of posts reserved for the members of the said community in the said services shall, as nearly as possible, be less by ten per cent. than the numbers so reserved during the immediately preceding period of two years:

Provided that at the end of ten years from the commencement of this Constitution all such reservations shall cease.

- (2) Nothing in clause (1) shall bar the appointment of members of the Anglo-Indian community to posts other than, or in addition to, those reserved for the community under that clause if such members are found qualified for appointment on merit as compared with the members of other communities.

Article 337.¹

During the first three financial years after the commencement of this Constitution, the same grants, if any, shall be made by the Union and by each State² * * * for the benefit of the Anglo-Indian community in respect of education as were made in the financial year ending on the thirty-first day of March, 1948.

During every succeeding period of three years the grants may be less by ten per cent. than those for the immediately preceding period of three years:

Provided that at the end of ten years from the commencement of this Constitution such grants, to the extent to which they are a special concession to the Anglo-Indian community, shall cease:

Provided further that no educational institution shall be entitled to receive any grant under this article unless at least forty per cent. of the annual admissions therein are made available to members of communities other than the Anglo-Indian community.

¹ Arts. 336 and 337 shall not apply to the State of Jammu and Kashmir.

² The words and letters "specified in Part A or Part B of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch.

Article 338.

- (1) There shall be a Special Officer for the Scheduled Castes and Scheduled Tribes to be appointed by the President.
- (2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under this Constitution and report to the President upon the working of those safeguards at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament.
- (3) In this article, references to the Scheduled Castes and Scheduled Tribes shall be construed as including references to such other backward classes as the President may, on receipt of the report of a Commission appointed under clause (1) of article 340, by order specify and also to the Anglo-Indian community.

Article 339.¹

- (1) The President may at any time and shall, at the expiration of ten years from the commencement of this Constitution by order appoint a Commission to report on the administration of the Scheduled Areas and the welfare of the Scheduled Tribes in the States ² * * * .

The order may define the composition, powers and procedure of the Commission and may contain such incidental or ancillary provisions as the President may consider necessary or desirable.

- (2) The executive power of the Union shall extend to the giving of directions to (a State)³ as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of the Scheduled Tribes in the State.

Article 340.

- (1) The President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes

¹Art. 339 shall not apply to the State of Jammu and Kashmir.

²The words and letters "specified in Part A and Part B of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch.

³Subs. by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch., for "any such State".

within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for the purpose by the Union or any State and the conditions subject to which such grants should be made, and the order appointing such Commission shall define the procedure to be followed by the Commission.

- (2) A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.
- (3) The President shall cause a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before each House of Parliament.

Article 341.

- (1) The President (may with respect to any State¹ (or Union territory)², and where it is a State³ * * *, after consultation with the Governor⁴ * * * thereof), by public notification⁵, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to² that State (or Union territory, as the case may be).

¹ Subs. by the Constitution (First Amendment) Act, 1951, s. 10, for "may, after consultation with the Governor or Rajpramukh of a State".

² Ins. by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch.

³ The words and letters "specified in Part A or Part B of the First Schedule" omitted, by s. 29 and Sch., *ibid*.

⁴ The words "or Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch.

⁵ See the Constitution (Scheduled Castes) Order, 1950 published with Ministry of Law Notification No. C.O. 19, dated the 10th August, 1950, Gazette of India, Extraordinary, Pt. II, Sec. 3, p. 163 and the Constitution (Scheduled Castes) (Part C States) Order, 1951, published with Ministry of Law Notification No. C.O. 32, dated the 20th September, 1951, Gazette of India, Pt. II, Sec. 3, p. 1198.

Article 341.

- (2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

Article 342.¹

- (1) The President (may with respect to any State² (or Union territory),³ and where it is a State * * *⁴, after consultation with the Governor * * *⁵ thereof), by public notification⁶, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State (or Union territory, as the case may be).³

¹Art. 342 shall not apply to the State of Jammu and Kashmir.

²Subs. by the Constitution (First Amendment) Act, 1951, s. 11, for "may, after consultation with the Governor or Rajpramukh of a State".

³Ins. by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch.

⁴The words and letters "specified in Part A or Part B of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch.

⁵The words "or Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch.

⁶See the Constitution (Scheduled Castes) Order, 1950 published with Ministry of Law Notification No. C.O. 19, dated the 10th August, 1950, Gazette of India, Extraordinary, Pt. II, Sec. 3, p. 163 and the Constitution (Scheduled Castes) (Part C States) Order, 1951, published with Ministry of Law Notification No. C.O. 32, dated the 20th September, 1951, Gazette of India, Pt. II, Sec. 3, p. 1198.

Article 342.

- (2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

Official Language:

Article 343.

- (1) The official language of the Union shall be Hindi in Devanagari script.

The form of numerals to be used for the official purposes of the Union shall be the international form of Indian numerals.

- (2) Notwithstanding anything in clause (1), for a period of fifteen years from the commencement of this Constitution, the English language shall continue to be used for all the official purposes of the Union for which it was being used immediately before such commencement:

Provided that the President may, during the said period, by order authorise the use of the Hindi language in addition to the English language and of the Devanagari form of numerals in addition to the international form of Indian numerals for any of the official purposes of the Union.

- (3) Notwithstanding anything in this article, Parliament may by law provide for the use, after the said period of fifteen years, of -

- (a) the English language, or
- (b) the Devanagari form of numerals, for such purposes as may be specified in the law.

Article 344.

- (1) The President shall, at the expiration of five years from the commencement of this Constitution and thereafter at the expiration of ten years from such commencement, by order constitute a Commission which shall consist of a Chairman and such other members representing the different languages specified in the Eighth Schedule as the President may appoint, and the order shall define the procedure to be followed by the Commission.

Article 344.

- (2) It shall be the duty of the Commission to make recommendations to the President as to -
 - (a) the progressive use of the Hindi language for the official purposes of the Union;
 - (b) restrictions on the use of the English language for all or any of the official purposes of the Union;
 - (c) the language to be used for all or any of the purposes mentioned in article 348;
 - (d) the form of numerals to be used for any one or more specified purposes of the Union;
 - (e) any other matter referred to the Commission by the President as regards the official language of the Union and the language for communication between the Union and a State or between one State and another and their use.
- (3) In making their recommendations under clause (2), the Commission shall have due regard to the industrial, cultural and scientific advancement of India, and the just claims and the interests of persons belonging to the non-Hindi speaking areas in regard to the public services.
- (4) There shall be constituted a Committee consisting of thirty members, of whom twenty shall be members of the House of the People and ten shall be members of the Council of States to be elected respectively by the members of the House of the People and the members of the Council of States in accordance with the system of proportional representation by means of the single transferable vote.
- (5) It shall be the duty of the Committee to examine the recommendations of the Commission constituted under clause (1) and to report to the President their opinion thereon.
- (6) Notwithstanding anything in article 343, the President may, after consideration of the report referred to in clause (5), issue directions in accordance with the whole or any part of that report.

Article 345.

Subject to the provisions of articles 346 and 347, the Legislature of a State may by law adopt any one or more of the languages in use in the State or Hindi as the language or languages to be used for all or any of the official purposes of that State:

Provided that, until the Legislature of the State otherwise provides by law, the English language shall continue to be used for those official purposes within the State for which it was being used immediately before the commencement of this Constitution.

Article 346.

The language for the time being authorised for use in the Union for official purposes shall be the official language for communication between one State and another State and between a State and the Union:

Provided that if two or more States agree that the Hindi language should be the official language for communication between such States, that language may be used for such communication.

Article 347.

On a demand being made in that behalf, the President may, if he is satisfied that a substantial proportion of the population of a State desire the use of any language spoken by them to be recognised by that State, direct that such language shall also be officially recognised throughout that State or any part thereof for such purpose as he may specify.

Article 348.

(1) Notwithstanding anything in the foregoing provisions of this Part, until Parliament by law otherwise provides -

(a) all proceedings in the Supreme Court and in every High Court,

(b) the authoritative texts -

(i) of all Bills to be introduced or amendments thereto to be moved in either House of Parliament or in the House or either House of the Legislature of a State,

(ii) of all Acts passed by Parliament or the Legislature of a State and of all Ordinances promulgated by the President or the Governor * * *¹ of a State, and

(iii) of all orders, rules, regulations and bye-laws issued under this Constitution or under any law made by Parliament or the Legislature of a State,

shall be in the English language.

¹The words "or Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch.

Article 348.

- (2) Notwithstanding anything in sub-clause (a) of clause (1), the Governor * * *¹ of a State may, with the previous consent of the President, authorise the use of the Hindi language, or any other language used for any official purposes of the State, in proceedings in the High Court having its principal seat in that State:

Provided that nothing in this clause shall apply to any judgment, decree or order passed or made by such High Court.

- (3) Notwithstanding anything in sub-clause (b) of clause (1), where the Legislature of a State has prescribed any language other than the English language for use in Bills introduced in, or Acts passed by, the Legislature of the State or in Ordinances promulgated by the Governor * * *¹ of the State or in any order, rule, regulation or bye-law referred to in paragraph (iii) of that sub-clause, a translation of the same in the English language published under the authority of the Governor * * *¹ of the State in the Official Gazette of that State shall be deemed to be the authoritative text thereof in the English language under this article.

Article 349.

During the period of fifteen years from the commencement of this Constitution, no Bill or amendment making provision for the language to be used for any of the purposes mentioned in clause (1) of article 348 shall be introduced or moved in either House of Parliament without the previous sanction of the President, and the President shall not give his sanction to the introduction of any such Bill or the moving of any such amendment except after he has taken into consideration the recommendations of the Commission constituted under clause (1) of article 344 and the report of the Committee constituted under clause (4) of that article.

Article 350.

Every person shall be entitled to submit a representation for the redress of any grievance to any officer or authority of the Union or a State in any of the languages used in the Union or in the State, as the case may be.

Article 350A.²

It shall be the endeavour of every State and of every local authority within the State to provide adequate facilities

¹The words "or Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch.

²Ins. by s. 21 *ibid*.

for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities.

Article 350B.

- (1) There shall be a Special Officer for linguistic minorities to be appointed by the President.
- (2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under this Constitution and report to the President upon those matters at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament, and sent to the Governments of the States concerned.)

Article 351.

It shall be the duty of the Union to promote the spread of the Hindi language, to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating without interfering with its genius, the forms, style and expressions used in Hindustani and in the other languages of India specified in the Eighth Schedule, and by drawing, wherever necessary or desirable, for its vocabulary, primarily on Sanskrit and secondarily on other languages.

Eighth Schedule.

(Articles 344(1) and 351).

1. Assamese.
2. Bengali.
3. Gujarati.
4. Hindi.
5. Kannada.
6. Kashmiri.
7. Malayalam.
8. Marathi.
9. Oriya.
10. Punjabi.
11. Sanskrit.
12. Tamil.
13. Telugu.
14. Urdu.

2. Constitution of the Republic of Pakistan (adopted 1962)

Principles of Law-Making and of Policy:

Article 6, Principle 2

Equality of Citizens.

1. All citizens should be equal before the law, be entitled to equal protection of the law and be treated alike in all respects.
2. This Principle may be departed from where -
 - (a) in the interest of equality itself, it is necessary to compensate for existing inequalities, whether natural, social, economic or of any other kind;
 - (b) in the interest of the proper discharge of public functions, it is necessary -
 - (i) to give to persons performing public functions powers, protections or facilities that are not given to other persons; or
 - (ii) to impose on persons performing public functions obligations or disciplinary controls that are not imposed on other persons; or
 - (c) it is necessary in the interest of the security of Pakistan or otherwise in the interest of the State to depart from this Principle,but, where this Principle is departed from, it should be ensured that no citizen gets an undue preference over another citizen and no citizen is placed under a disability, liability or obligation that does not apply to other citizens of the same category.
3. This Principle shall not be construed as preventing a legislature from making laws different from laws made by any other legislature.

Article 6, Principle 7

Freedom of Religion.

No law should -

- (a) prevent the members of a religious community or denomination from professing, practising or propagating, or from providing instruction in, their religion, or from conducting institutions for the purposes of or in connection with their religion;
- (b) require any person to receive religious instruction, or to attend a religious ceremony or religious worship, relating to a religion other than his own;

- (c) impose on any person a tax the proceeds of which are to be applied for the purposes of a religion other than his own;
- (d) discriminate between religious institutions in the granting of exemptions or concessions in relation to any tax; or
- (e) authorize the expenditure of public moneys for the benefit of a particular religious community or denomination except moneys raised for that purpose.

Article 6, Principle 12

Public Educational Institutions.

1. No law should, on the ground of race, religion, caste or place of birth, deprive any citizen of the right to attend any educational institution that is receiving aid from public revenues.
2. This Principle may be departed from for the purpose of ensuring that a class of citizens that is educationally backward shares in available educational facilities.

Article 6, Principle 14

Protection of Languages, Scripts and Cultures.

No law should prevent any section of the community from having a distinct language, script or culture of its own.

Article 8, Principle 3

Fair Treatment to Minorities.

The legitimate rights and interests of the minorities should be safeguarded, and the members of minorities should be given due opportunity to enter the service of Pakistan.

Article 8, Principle 4

Promotion of Interests of Backward Peoples.

Special care should be taken to promote the educational and economic interests of people of backward classes or in backward areas.

Article 8, Principle 5

Advancement of Under-privileged Castes, etc.

Steps should be taken to bring on terms of equality with other persons the members of the under-privileged castes, races, tribes and groups and, to this end, the under-privileged castes, races, tribes and groups within a Province should be identified by the Government of the Province and entered in a schedule of under-privileged classes.

Article 8, Principle 6

Opportunities to Participate in National Life, etc.

The people of different areas and classes, through education, training, industrial development and other methods, should be enabled to participate fully in all forms of national activities, including employment in the service of Pakistan.

Article 8, Principle 14

Entry into Service of Pakistan not to be Denied on Grounds of Race, etc.

1. No citizen should be denied entry into the service of Pakistan on the grounds of race, religion, caste, sex or place of residence or birth.
2. This Principle may be departed from where, in the public interest -
 - (a) it is desirable that -
 - (i) a person who is to perform functions in relation to a particular area should be a resident of that area; and
 - (ii) a person who is to perform functions of a particular kind should be of a particular sex; or
 - (b) it is necessary so to do for the purpose of ensuring that, in relation to the Central Government, persons from all parts of Pakistan, and, in relation to a Provincial Government, persons from all parts of the Province concerned, have an opportunity of entering the service of Pakistan.

Article 8, Principle 16

Parity between the Provinces in Central Government.

Parity between the Provinces in all spheres of the Central Government should, as nearly as is practicable, be achieved.

Article 8, Principle 17

Service in the Defence Services.

Persons from all parts of Pakistan should be enabled to serve in the Defence Services of Pakistan.

Relations between the Centre and the Provinces:

Article 145 (4)

A primary object of the Council in formulating the plans referred to in clause (3) of this Article shall be to ensure that disparities between the Provinces, and between different areas within a Province, in relation to income

per capita, are removed and that the resources of Pakistan (including resources in foreign exchange) are used and allocated in such manner as to achieve that object in the shortest possible time, and it shall be the duty of each Government to make the utmost endeavour to achieve that object.

Miscellaneous: Article 211.

- (1) The Capital of the Republic shall be Islamabad situated in the district of Rawalpindi in the Province of West Pakistan at the site selected for the Capital of Pakistan before the enactment of this Constitution.
- (2) The area of the Capital (in this Constitution referred to as "the Islamabad Capital Territory") shall be determined by the Central Legislature, but shall not be less than two hundred square miles.
- (3) There shall be a second Capital of the Republic at Dacca in the Province of East Pakistan.
- (4) The area of the second Capital (in this Constitution referred to as "the Dacca Capital Territory") shall be determined by the Central Legislature.
- (5) The principal seat of the National Assembly shall be at Dacca.
- (6) The principal seat of the Central Government shall, subject to clause (7) of this Article, be at Islamabad.
- (7) Until provision is made for establishing the Central Government at Islamabad, the principal seat of that Government shall be at Rawalpindi in the Province of West Pakistan.

Article 215.

- (1) The national languages of Pakistan are Bengali and Urdu, but this Article shall not be construed as preventing the use of any other language and, in particular, the English language may be used for official and other purposes until arrangements for its replacement are made.
- (2) In the year One thousand nine hundred and seventy-two, the President shall constitute a Commission to examine and report on the question of the replacement of the English language for official purposes.

Article 240.

Subject to the observance of the Principle of Policy that parity between the Provinces in all spheres of the Central Government should, as nearly as is practicable, be achieved, any quota relating to the recruitment of persons to the service of Pakistan in relation to the affairs of the Government of Pakistan that, immediately before the commencing day, applied to a particular region shall continue to apply until the expiration of a period of ten years after that day.

3. Constitution of the Federation of Malaysia (as effective 1963)

Fundamental Liberties:

Article 8.

- (1) All person are equal before the law and entitled to the equal protection of the law.
- (2) Except as expressly authorised by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent or place of birth in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.
- (3) There shall be no discrimination in favour of any person on the ground that he is a subject of the Ruler of any State.
- (4) No public authority shall discriminate against any person on the ground that he is resident or carrying on business in any part of the Federation outside the jurisdiction of the authority.
- (5) This Article does not invalidate or prohibit -
 - (a) any provision regulating personal law;
 - (b) any provision or practice restricting office or employment connected with the affairs of any religion, or of an institution managed by a group professing any religion, to persons professing that religion;
 - (c) any provision for the protection, wellbeing or advancement of the aboriginal peoples of the Malay Peninsula (including the reservation of land) or the reservation to aborigines of a reasonable proportion of suitable positions in the public service;
 - (d) any provision prescribing residence in a State or part of a State as a qualification for election or appointment to any authority having jurisdiction only in that State or part, or for voting in such an election;
 - (e) any provision of a Constitution of a State, being or corresponding to a provision in force immediately before Merdeka Day;
 - (f) any provision restricting enlistment in the Malay Regiment to Malays.

Article 11.

- (1) Every person has the right to profess and practise his religion and, subject to clause (4), to propagate it.
- (2) No person shall be compelled to pay any tax the proceeds of which are specially allocated in whole or in part for the purposes of a religion other than his own.
- (3) Every religious group has the right -
 - (a) to manage its own religious affairs;
 - (b) to establish and maintain institutions for religious or charitable purposes; and
 - (c) to acquire and own property and hold and administer it in accordance with law.
- (4) State law may control or restrict the propagation of any religious doctrine or belief among persons professing the Muslim religion.
- (5) This Article does not authorise any act contrary to any general law relating to public order, public health or morality.

Article 12.

- (1) Without prejudice to the generality of Article 8, there shall be no discrimination against any citizens on the grounds only of religion, race, descent or place of birth -
 - (a) in the administration of any educational institution maintained by a public authority, and, in particular, the admission of pupils or students or the payment of fees;
 - (b) in providing out of the funds of a public authority financial aid for the maintenance or education of pupils or students in any educational institution (whether or not maintained by a public authority and whether within or outside the Federation).
- (2) Every religious group has the right to establish and maintain institutions for the education of children and provide therein instruction in its own religion, and there shall be no discrimination on the ground only of religion in any law relating to such institutions or in the administration of any such law; but federal law may provide for special financial aid for the establishment or maintenance of Muslim institutions or the instruction in the Muslim religion of persons professing that religion.

Article 12.

- (3) No person shall be required to receive instruction in or to take part in any ceremony or act of worship of a religion other than his own.
- (4) For the purposes of clause (3) the religion of a person under the age of eighteen years shall be decided by his parent or guardian.

Relations between the Federation and the States:

Article 89.

- (1) Any land in a State which immediately before Merdeka Day was a Malay reservation in accordance with the existing law may continue as a Malay reservation in accordance with that law until otherwise provided by an Enactment of the Legislature of that State, being an Enactment -
 - (a) passed by a majority of the total number of members of the Legislative Assembly and by the votes of not less than two-thirds of the members present and voting; and
 - (b) approved by resolution of each House of Parliament passed by a majority of the total number of members of that House and by the votes of not less than two-thirds of the members voting.
- (2) Any land in a State which is not for the time being a Malay reservation in accordance with the existing law and has not been developed or cultivated may be declared as a Malay reservation in accordance with that law:
Provided that -
 - (a) where any land in a State is declared a Malay reservation under this clause, an equal area of land in that State which has not been developed or cultivated shall be made available for general alienation; and
 - (b) the total area of land in a State for the time being declared as a Malay reservation under this clause shall not at any time exceed the total area of land in that State which has been made available for general alienation in pursuance of paragraph (a).
- (3) Subject to clause (4), the Government of any State may, in accordance with the existing law, declare as a Malay reservation -
 - (a) any land acquired by that Government by agreement for that purpose;
 - (b) on the application of the proprietor, and with the consent of every person having a right or interest therein, any other land;

- (c) in a case where any land ceases to be a Malay reservation, any land of a similar character and of an area not exceeding the area of that land.
- (4) Nothing in this Article shall authorise the declaration as a Malay reservation of any land which at the time of the declaration is owned or occupied by a person who is not a Malay or in or over which such a person has then any right or interest.
- (5) Without prejudice to clause (3), the Government of any State may, in accordance with law, acquire land for the settlement of Malays or other communities, and establish trusts for that purpose.
- (6) In this Article "Malay reservation" means land reserved for alienation to Malays or to natives of the State in which it lies; and "Malay" includes any person who, under the law of the State in which he is resident, is treated as a Malay for the purposes of the reservation of land.
- (7) Subject to Article 161A this Article shall have effect notwithstanding any other provision of this Constitution; but (without prejudice to any such other provision) no land shall be retained or declared as a Malay reservation except as provided by this Article and Article 90.

Public Services:

Article 136.

All persons of whatever race in the same grade in the service of the Federation shall, subject to the terms and conditions of their employment, be treated impartially.

General and Miscellaneous:

Article 152.

- (1) The national language shall be the Malay language and shall be in such script as Parliament may by law provide:
Provided that -
 - (a) no person shall be prohibited or prevented from using (otherwise than for official purposes), or from teaching or learning, any other language; and
 - (b) nothing in this clause shall prejudice the right of the Federal Government or of any State Government to preserve and sustain the use and study of the language of any other community in the Federation.
- (2) Notwithstanding the provisions of clause (1), for a period of ten years after Merdeka Day, and thereafter until Parliament otherwise provides, the English

language may be used in both Houses of Parliament, in the Legislative Assembly of every State and for all other official purposes.

- (3) Notwithstanding the provisions of clause (1), for a period of ten years after Merdeka Day, and thereafter until Parliament otherwise provides, the authoritative texts -

- (a) of all Bills to be introduced or amendments thereto to be moved in either House of Parliament, and
- (b) of all Acts of Parliament and all subsidiary legislation issued by the Federal Government.

shall be in the English language.

- (4) Notwithstanding the provisions of clause (1), for a period of ten years after Merdeka Day, and thereafter until Parliament otherwise provides, all proceedings in the Federal Court or a High Court shall be in the English language:

Provided that, if the Court and counsel on both sides agree, evidence taken in the language spoken by the witness need not be translated into or recorded in English.

- (5) Notwithstanding the provisions of clause (1), until Parliament otherwise provides, all proceedings in subordinate courts, other than the taking of evidence, shall be in the English language.

Article 153.

- (1) It shall be the responsibility of the Yang di-Pertuan Agong to safeguard the special position of the Malays and the legitimate interests of other communities in accordance with the provisions of this Article.
- (2) Notwithstanding anything in this Constitution, but subject to the provisions of Article 40 and of this Article, the Yang di-Pertuan Agong shall exercise his functions under this Constitution and federal law in such manner as may be necessary to safeguard the special position of the Malays and to ensure the reservation for Malays of such proportion as he may deem reasonable of positions in the public service (other than the public service of a State) and of scholarships, exhibitions and other similar educational or training privileges or special facilities given or accorded by the Federal Government and, when any permit or licence for the operation of any trade or business is required by federal law, then, subject to the provisions of that law and this Article, of such permits and licences.

Article 153.

- (3) The Yang di-Pertuan Agong may, in order to ensure in accordance with clause (2) the reservation to Malays of positions in the public service and of scholarships, exhibitions and other educational or training privileges or special facilities, give such general directions as may be required for that purpose to any Commission to which Part X applies or to any authority charged with responsibility for the grant of such scholarships, exhibitions or other educational or training privileges or special facilities; and the Commission or authority shall duly comply with the directions.
- (4) In exercising his functions under this Constitution and federal law in accordance with clauses (1) to (3) the Yang di-Pertuan Agong shall not deprive any person of any public office held by him or of the continuance of any scholarship, exhibition or other educational or training privileges or special facilities enjoyed by him.
- (5) This Article does not derogate from the provisions of Article 136.
- (6) Where by existing federal law a permit or licence is required for the operation of any trade or business the Yang di-Pertuan Agong may exercise his functions under that law in such manner, or give such general directions to any authority charged under that law with the grant of such permits or licences, as may be required to ensure the reservation of such proportion of such permits or licences for Malays as the Yang di-Pertuan Agong may deem reasonable; and the authority shall duly comply with the directions.
- (7) Nothing in this Article shall operate to deprive or authorise the deprivation of any person of any right, privilege, permit or licence accrued to or enjoyed or held by him or to authorise a refusal to renew to any person any such permit or licence or a refusal to grant to the heirs, successors or assigns of a person any permit or licence when the renewal or grant might reasonably be expected in the ordinary course of events.
- (8) Notwithstanding anything in this Constitution, where by any federal law any permit or licence is required for the operation of any trade or business, that law may provide for the reservation of a proportion of such permits or licences for Malays; but no such law shall for the purpose of ensuring such a reservation -

- (a) deprive or authorise the deprivation of any person of any right, privilege, permit or licence accrued to or enjoyed or held by him; or
 - (b) authorise a refusal to renew to any person any such permit or licence or a refusal to grant to the heirs, successors or assigns of any person any permit or licence when the renewal or grant might in accordance with the other provisions of the law reasonably be expected in the ordinary course of events, or prevent any person from transferring together with his business any transferable licence to operate that business; or
 - (c) where no permit or licence was previously required for the operation of the trade or business, authorise a refusal to grant a permit or licence to any person for the operation of any trade or business which immediately before the coming into force of the law he had been bona fide carrying on, or authorise a refusal subsequently to renew to any such person any permit or licence, or a refusal to grant to the heirs, successors or assigns of any such person any such permit or licence when the renewal or grant might in accordance with the other provisions of that law reasonably be expected in the ordinary course of events.
- (9) Nothing in this Article shall empower Parliament to restrict business or trade solely for the purpose of reservations for Malays.
- (10) The Constitution of the State of any Ruler may make provision corresponding (with the necessary modifications) to the provisions of this Article.

Article 161.

- (1) No Act of Parliament terminating or restricting the use of the English language for any of the purposes mentioned in Clauses (2) to (5) of Article 152 shall come into operation as regards the use of the English language in any case mentioned in Clause (2) of this Article until ten years after Malaysia Day.
- (2) Clause (1) applies -
 - (a) to the use of the English language in either House of Parliament by a member for or from a Borneo State; and
 - (b) to the use of the English language for proceedings in the High Court in Borneo or in a subordinate court in a Borneo State, or for such proceedings in the Federal Court as are mentioned in Clause (4); and

- (c) to the use of the English language in a Borneo State in the Legislative Assembly or for other official purposes (including the official purposes of the Federal Government).
- (3) Without prejudice to Clause (1), no such Act of Parliament as is there mentioned shall come into operation as regards the use of the English language for proceedings in the High Court in Borneo or for such proceedings in the Federal Court as are mentioned in Clause (4), until the Act or the relevant provision of it has been approved by enactments of the Legislatures of the Borneo States; and no such Act shall come into operation as regards the use of the English language in a Borneo State in any other case mentioned in paragraph (b) or (c) of Clause (2), until the Act or the relevant provision of it has been approved by an enactment of the Legislature of that State.
- (4) The proceedings in the Federal Court referred to in Clauses (2) and (3) are any proceedings on appeal from the High Court in Borneo or a judge thereof, and any proceedings under Clause (2) of Article 128 for the determination of a question which has arisen in proceedings before the High Court in Borneo or a subordinate court in a Borneo State.
- (5) Notwithstanding anything in Article 152, in a Borneo State a native language in current use in the State may be used in native courts or for any code of native law and custom, and in the case of Sarawak, until otherwise provided by enactment of the Legislature, may be used by a member addressing the Legislative Assembly or any committee thereof.

Article 161A.

- (1) Subject to Clause (2), the provisions of Clauses (2) to (5) of Article 153, so far as they relate to the reservation of positions in the public service, shall apply in relation to natives of a Borneo State as they apply in relation to Malays.
- (2) In a Borneo State Article 153 shall have effect with the substitution of references to natives of the State for the references to Malays, but as regards scholarships, exhibitions and other educational or training privileges and facilities Clause (2) of that Article shall not require the reservation of a fixed proportion for natives.
- (3) Before advice is tendered to the Yang di-Pertuan Agong as to the exercise of his powers under Article 153 in relation to a Borneo State, the Chief Minister of the State in question shall be consulted.

Article 161A.

- (4) The Constitutions of the Borneo States may make provision corresponding (with the necessary modifications) to Article 153 with the changes made by Clause (2).
- (5) Article 89 shall not apply to a Borneo State, and Article 8 shall not invalidate or prohibit any provision of State law in a Borneo State for the reservation of land for natives of the State or for alienation to them, or for giving them preferential treatment as regards the alienation of land by the State.
- (6) In this Article "native" means -
 - (a) in relation to Sarawak, a person who is a citizen and either belongs to one of the races specified in Clause (7) as indigenous to the State or is of mixed blood deriving exclusively from those races; and
 - (b) in relation to Sabah, a person who is a citizen, is the child or grandchild of a person of a race indigenous to Sabah, and was born (whether on or after Malaysia Day or not) either in Sabah or to a father domiciled in Sabah at the time of the birth.
- (7) The races to be treated for the purposes of the definition of "native" in Clause (6) as indigenous to Sarawak are the Bukitans, Bisayahs, Dusuns, Sea Dayaks, Land Dayaks, Kadayans, Kalabits, Kayans, Kenyahs (including Sabups and Sipengs), Kajangs (including Sekapans, Kejamans, Lahanans, Malays, Punans, Tanjongs and Kanowits), Lugats, Lisums, Melanos, Muruts, Penans, Sians, Tagals, Tabuns and Ukits.

Article 161B.

- (1) In so far as any provision made by or under an Act of Parliament, by removing or altering a residence qualification, confers a right to practise before a court in the Borneo States or either of them on persons not previously having the right, that provision shall not come into operation until adopted in the States or State in question by an enactment of the Legislature.
- (2) This Article shall apply to the right to practise before the Federal Court when sitting in the Borneo States and entertaining proceedings on appeal from the High Court in Borneo or a judge thereof or proceedings under Clause (2) of Article 128 for the determination of a question which has arisen in proceedings before the High Court in Borneo or a subordinate court in a Borneo State.

Article 161C.

- (1) No Act of Parliament which provides as respects a Borneo State for special financial aid for the establishment or maintenance of Muslim institutions or the instruction in the Muslim religion or persons professing that religion shall be passed without the consent of the Governor.
- (2) Where under any provision of federal law not having effect as respects Sabah, or not having effect as respects Sarawak, any such aid as aforesaid is given by way of grant out of public funds in any year, there shall be paid by the Federation to the Government of Sabah or Sarawak, as the case may be, and applied for social welfare purposes in that State, amounts which bear to the revenue derived by the Federation from that State in the year the same proportion as the grant bears to the revenue derived by the Federation from other States in that year.
- (3) For the purposes of Clause (2) the revenue derived by the Federation from any State or States shall be the amount after deduction of any sums assigned to States under Article 110 or the Tenth Schedule; and there shall be disregarded any contributions received by the Federation out of the proceeds of lotteries conducted by the Social and Welfare Services Lotteries Board together with any amounts applied to such aid as aforesaid out of or by reference to those contributions.

Article 161D.

Notwithstanding Clause (4) of Article 11, there may be included in the Constitution of a Borneo State provision that an enactment of the State Legislature controlling or restricting the propagation of any religious doctrine or belief among persons professing the Muslim religion shall not be passed unless it is agreed to in the Legislative Assembly on second or third reading or on both by a specified majority, not being a majority greater than two-thirds of the total number of members of the Assembly.

Article 161E.

- (1) As from the passing of the Malaysia Act no amendment to the Constitution made in connection with the admission to the Federation of a Borneo State shall be excepted from Clause (3) of Article 159 by Clause (4)(bb) of that Article; nor shall any modification made as to the application of the Constitution to a State be so excepted unless the modification is such as to equate or assimilate the position of that State under the Constitution to the position of the States of Malaya.

Article 161E.

- (2) No amendment shall be made to the Constitution without the concurrence of the Governor of the Borneo State or each of the Borneo States concerned, if the amendment is such as to affect the operation of the Constitution as regards any of the following matters:
 - (a) the right of persons born before Malaysia Day to citizenship by reason of a connection with the State, and (except to the extent that different provision is made by the Constitution as in force on Malaysia Day) the equal treatment, as regards their own citizenship and that of others, of persons born or resident in the State and of persons born or resident in the States of Malaya;
 - (b) the constitution and jurisdiction of the High Court in Borneo and the appointment, removal and suspension of judges of that court;
 - (c) the matters with respect to which the Legislature of the State may make laws, and the executive authority of the State in those matters, and (so far as related thereto) the financial arrangements between the Federation and the State;
 - (d) religion in the State, the use in the State or in Parliament of any language and the special treatment of natives of the State;
 - (e) the allocation to the State, in any Parliament summoned to meet before the end of August, 1970, of a quota of members of the House of Representatives not less, in proportion to the total allocated to the other States which are members of the Federation on Malaysia Day, than the quota allocated to the State on that day.
- (3) No amendment to the Constitution which affects its operation as regards the quota of members of the House of Representatives allocated to a Borneo State shall be treated for purposes of Clause (1) as equating or assimilating the position of that State to the position of the States of Malaya.
- (4) In relation to any rights and powers conferred by federal law on the government of a Borneo State as regards entry into the State and residence in the State and matters connected therewith (whether or not the law is passed before Malaysia Day) Clause (2) shall apply, except in so far as the law provides to the contrary, as if the law had been embodied in the Constitution and those rights and powers had been included among the matters mentioned in paragraphs (a) to (e) of that Clause.

Article 161E.

(5) In this Article "amendment" includes addition and repeal.

Article 161F.

Notwithstanding anything in Article 152, until otherwise provided by enactment of the Legislature of Singapore, the English, Mandarin and Tamil languages may be used in the Legislative Assembly of Singapore, and the English language may be used for the authoritative texts of all Bills to be introduced or amendments thereto to be moved in that Assembly, and of all enactments of that Legislature, and of all subsidiary legislation issued by the government of Singapore.

Article 161G.

Nothing in Clause (2) of Article 8 or Clause (1) of Article 12 shall prohibit or invalidate any provision of State law in Singapore for the advancement of Malays; but there shall be no reservation for Malays in accordance with Article 153 of positions in the public service to be filled by recruitment in Singapore, or of permits or licences for the operation of any trade or business in Singapore.

Article 161H.

(1) No amendment shall be made to the Constitution without the concurrence of the Governor if the amendment is such as to affect the operation of the Constitution in relation to Singapore as regards any of the following matters -

- (a) citizenship of Singapore, and the restriction to citizens of Singapore of the right to be a member of either House of Parliament for or from Singapore, or to be a member of the Legislative Assembly of Singapore, or to vote at elections in Singapore;
- (b) the constitution and jurisdiction of the High Court in Singapore and the appointment, removal and suspension of judges of that court;
- (c) the matters with respect to which the Legislature of the State may make laws, the executive authority of the State in those matters, the borrowing powers of the State and the financial arrangements between the Federation and the State;
- (d) the discharge of functions of the Public Services Commission or of the Judicial and Legal Service Commission by a branch established for the State, and the constitution of any such branch;
- (e) religion in the State, the use in the State or in Parliament of any language and the special position of the Malays in Singapore;

- (f) the allocation to the State, in any Parliament summoned to meet before the end of August, 1970, of a quota of members of the House of Representatives not less, in proportion to the total allocated to the other States which are members of the Federation on Malaysia Day, than the quota allocated to the State on that day.
- (2) In this Article "amendment" includes addition and repeal.

4. The Constitution of the Federal Republic of Nigeria
(adopted 1963)

Fundamental Rights:

Section 24.

- (1) Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief and freedom, either alone or in community with others and in public or in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.
- (2) No person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observances if such instruction, ceremony or observances relate to a religion other than his own.
- (3) No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any place of education maintained wholly by that community or denomination.
- (4) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society -
 - (a) in the interest of defence, public safety, public order, public morality or public health; or
 - (b) for the purpose of protecting the rights and freedom of other persons, including their rights and freedom to observe and practise their religions without the unsolicited intervention of members of other religions.

Section 28.

- (1) A citizen of Nigeria of a particular community, tribe, place of origin, religion or political opinion shall not, by reason only that he is such a person -
 - (a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the Government of the Federation or the Government of a Region to disabilities or restrictions to which citizens of Nigeria of other communities, tribes, places of origin, religions or political opinions are not made subject; or
 - (b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action any privilege or advantage that is not conferred

on citizens of Nigeria of other communities, tribes, places of origin, religions or political opinions.

- (2) Nothing in this section shall invalidate any law by reason only that the law -
- (a) prescribes qualifications for service in an office under the state or as a member of the armed forces of the Federation or a member of a police force or for the service of a body corporate established directly by any law in force in Nigeria;
 - (b) imposes restrictions with respect to the appointment of any person to an office under the state or as a member of the armed forces of the Federation or a member of a police force or to an office in the service of a body corporate established directly by any law in force in Nigeria;
 - (c) imposes restrictions with respect to the acquisition or use by any person of land or other property; or
 - (d) imposes any disability or restriction or accords any privilege or advantage that, having regard to its nature and to special circumstances pertaining to the persons to whom it applies, is reasonably justifiable in a democratic society.

Parliament:

Section 59.

The business of Parliament shall be conducted in English.

Miscellaneous:

Section 159.

- (1) There shall be a board for the Niger Delta which shall be styled the Niger Delta Development Board.
- (2) The members of the Board shall be -
- (a) a person appointed by the President, who shall be chairman;
 - (b) a person appointed by the Governor of Eastern Nigeria;
 - (c) a person appointed by the Governor of Mid-Western Nigeria; and
 - (d) such other persons as may be appointed in such manner as may be prescribed by Parliament to represent the inhabitants of the Niger Delta.
- (3) A member of the Board shall vacate his office in such circumstances as may be prescribed by Parliament.

Section 159.

- (4) The Board shall be responsible for advising the Government of the Federation and the Governments of Eastern Nigeria and Mid-Western Nigeria with respect to the physical development of the Niger Delta, and in order to discharge that responsibility the Board shall -
- (a) cause the Niger Delta to be surveyed in order to ascertain what measures are required to promote its physical development;
 - (b) prepare schemes designed to promote the physical development of the Niger Delta, together with estimates of the costs of putting the schemes into effect;
 - (c) submit to the Government of the Federation and the Governments of Eastern Nigeria and Mid-Western Nigeria annual reports describing the work of the Board and the measures taken in pursuance of its advice.
- (5) Parliament may make such provision as it considers expedient for enabling the Board to discharge its functions under this section.
- (6) In this section, "the Niger Delta" means the area specified in the Proclamation relating to the Board which was made on the twenty-sixth day of August, 1959.
- (7) This section shall cease to have effect on the first day of July, 1969, or such later date as may be prescribed by Parliament. 1

¹The Niger Delta is an area inhabited by ethnic groups which are in a minority in both the Regions adjacent to the Niger Delta.

5. The Constitution of the Federation of Rhodesia and Nyasaland
(adopted 1953)

Preamble

Whereas the Colony of Southern Rhodesia is part of Her Majesty's dominions and Northern Rhodesia and Nyasaland are territories under Her Majesty's protection;

And whereas the said Colony and territories are the rightful home of all lawful inhabitants thereof, whatever their origin;

And whereas the Colony of Southern Rhodesia should continue to enjoy responsible government in accordance with its constitution;

And whereas Northern Rhodesia and Nyasaland should continue under the special protection of Her Majesty, to enjoy separate Governments for so long as their respective peoples so desire, those Governments remaining responsible (subject to the ultimate authority of Her Majesty's Government in the United Kingdom) for, in particular, the control of land in those territories, and for the local and territorial political advancement of the peoples thereof;

And whereas the association of the Colony and territories aforesaid in a Federation under Her Majesty's sovereignty, enjoying responsible government in accordance with this Constitution, would conduce to the security, advancement and welfare of all their inhabitants, and in particular would foster partnership and co-operation between their inhabitants and enable the Federation, when those inhabitants so desire, to go forward with confidence towards the attainment of full membership of the Commonwealth;

Now, therefore, the said Colony and territories shall be associated in a Federation in accordance with the following provisions:

General:

Article 7.

- (1) The official language of the Federation shall be English and, except as may be provided by any law of the Federal Legislature -
 - (a) all proceedings, records and Bills of the Federal Assembly;
 - (b) any law of the Federal Legislature and any instrument made under any such law or under this Constitution;
 - (c) all documents issued by the Federal Government; and
 - (d) all proceedings and records of the Federal Supreme Court or of any body authorised or established by

or under this Constitution or by any law of the Federal Legislature,

shall be in the English language:

Provided that nothing in this article shall be deemed to prohibit the use of any other language as well as English for the purpose of bringing any matter to the notice of any person concerned therewith.

The African Affairs Board:

Article 67.

- (1) There shall be a Standing Committee of the Federal Assembly, to be known as the African Affairs Board, consisting of the following members of the Federal Assembly, that is to say -
 - (a) the two specially appointed European members and the specially elected European member; and
 - (b) one specially elected African member from each of the three Territories, to be selected by a majority vote of the specially elected African members and the members referred to in sub-paragraph (a) of this paragraph acting together.
- (2) The Governor-General in his discretion shall appoint a chairman and a deputy chairman from among the members of the Board.

Article 68.

- (1) Any decision of the Board shall be made by a majority vote of the members present and voting.
- (2) At any sitting of the Board at which any decision is taken -
 - (a) the chairman or, in the absence of the chairman, the deputy chairman shall preside, who shall be entitled to vote as a member of the Board and, in the event of an equality of votes, shall in addition have and exercise a casting vote;
 - (b) the quorum of the Board shall be three.
- (3) In exercising his casting vote, the chairman or deputy chairman shall vote in such a manner as to enable further consideration to be given to the matter.

Article 69.

Subject to the last foregoing article the Board may sit and act -

- (a) notwithstanding any vacancy among its members; and
- (b) notwithstanding that the Federal Assembly is adjourned or prorogued,

and in the event of a dissolution of the Assembly the persons who immediately before that dissolution are members of the Board may continue to sit and act as the Board until the Assembly first meets after that dissolution.

Article 70.

It shall be the general function of the Board -

- (a) to make to the Prime Minister, or through the Prime Minister to the Executive Council, such representations in relation to any matter within the legislative or executive authority of the Federation as the Board may consider to be desirable in the interests of Africans;
- (b) if the Government of any Territory so request, to give to that Government any assistance which the Board can provide in relation to the study of matters affecting Africans, and in particular assistance in the exchange of information relating to any such matter.

Article 71.

- (1) It shall be the particular function of the Board to draw attention to any Bill introduced in the Federal Assembly and any instrument which has the force of law and is made in the exercise of a power conferred by a law of the Federal Legislature if that Bill or instrument is in their opinion a differentiating measure; and for that purpose they shall have the powers conferred by the subsequent provisions of this Chapter of this Constitution.
- (2) In this article and in the subsequent provisions of this Chapter of this Constitution, the expression "differentiating measure" means a Bill or instrument by which Africans are subjected or made liable to any conditions, restrictions or disabilities disadvantageous to them to which Europeans are not also subjected or made liable, or a Bill or instrument which will in its practical application have such an effect.

Article 72.

There shall be paid out of moneys provided by the Federal Legislature to the Board or to the members thereof such special allowances and other sums as that Legislature may determine for the purpose of enabling the Board and the members thereof to discharge their functions under this Chapter of this Constitution.

Article 73.

Before any Bill is introduced in the Federal Assembly, a copy of the proposed Bill shall be sent to the Board unless the Governor-General in his discretion has certified in writing that the proposed Bill -

- (a) is of such a nature that it is not in the public interest that it should be published before its introduction in the Assembly; or
- (b) is so urgent that it is not in the public interest to delay its introduction in the Assembly until a copy has been sent to the Board.

Article 74.

If at any stage during the passage of any Bill through the Federal Assembly that Bill, whether as originally introduced or as amended at any stage, is in the opinion of the Board a differentiating measure, the Board may lay before the Assembly a report on the Bill stating their reasons for considering the Bill to be such a measure; and, if at any time after such a report has been laid the Board no longer consider the Bill to be such a measure, they may lay before the Assembly a further report to that effect.

Article 75.

- (1) On the passing of any Bill by the Federal Assembly the Board may present to the Speaker of the Federal Assembly a request in writing that the Bill shall be reserved by the Governor-General for the signification of Her Majesty's pleasure on the ground that it is a differentiating measure, and any such request shall include the reasons why in the opinion of the Board the Bill is such a measure, and, if the decision to make the request was not unanimous, a statement to that effect.
- (2) Where such a request is received by the Speaker, he shall cause it to be delivered to the Governor-General when the Bill is presented to him for assent.
- (3) Where such a request is delivered to the Governor-General, then, except as provided in paragraph (4) of this article, he shall not himself assent to the Bill but shall reserve it for the signification of Her Majesty's pleasure and send the Board's request to a Secretary of State together with the Bill.

Article 75.

- (4) Notwithstanding any such request by the Board, the Governor-General in his discretion may himself assent to the Bill -
- (a) if he satisfies himself that it is not a differentiating measure and that the reasons given by the Board for considering it to be such a measure are of an irrelevant or frivolous nature; or
 - (b) if he is satisfied, upon representations made by the Prime Minister, that it is essential in the public interest that the Bill be brought into immediate operation;

but if he does so assent the Governor-General shall forthwith send to a Secretary of State the Bill to which he has assented together with the Board's request and a statement of his reasons for assenting.

- (5) Nothing in paragraph (4) of this article shall be construed as authorising the Governor-General himself to assent to any Bill which he is required by article ten or article ninety-seven of this Constitution to reserve for the signification of Her Majesty's pleasure.

Article 76.

The provisions of the two last foregoing articles shall not be construed as prejudicing any additional provision which may be made by Standing Orders of the Federal Assembly with respect to the referring of Bills or proposed amendments thereto to the Board for the Board's report thereon at any stage or with respect to the action to be taken by the Assembly on any report by the Board.

Article 77.

- (1) If any instrument which has the force of law and is made in the exercise of a power conferred by a law of the Federal Legislature is in the opinion of the Board a differentiating measure, the Board may at any time within thirty days after the publication of the instrument send to the Prime Minister a report in writing to that effect stating the reasons why in the opinion of the Board the instrument is such a measure.
- (2) When such a report in respect of any instrument is received by the Prime Minister, he shall within thirty days, unless the Board have in the meantime by notice in writing withdrawn the report, send the report and his comments thereon to the Governor-General, and the Governor-General shall forward the report and the Prime Minister's comments thereon to a Secretary of State.

Article 77.

- (3) A Secretary of State may at any time within twelve months after receiving such a report with respect to an instrument disapprove of that instrument, and after receiving notification of such a disapproval the Governor-General shall cause notice of the disapproval to be published in the official Gazette of the Federation and the instrument shall be deemed to be annulled as from such date, not being earlier than the publication of the notice, as the Governor-General in his discretion may by that notice appoint.
- (4) On the annulment of any instrument under this article, any other instrument or law amended, revoked or repealed by the instrument annulled shall have effect from the date of the annulment as if the instrument annulled had not been made, but save as provided in the foregoing provisions of this paragraph the provisions of subsection (2) of section thirty-eight of the Interpretation Act, 1889, shall apply to that annulment as they apply to the repeal of an Act of Parliament.

6. The Federal Constitution of the Swiss Confederation
(adopted 1874)

Article 4.

All Swiss are equal before the Law. In Switzerland there is neither subjection nor privilege of locality, birth, family, or person.

Article 5.

The Confederation guarantees to the Cantons their territory, their sovereignty within the limits of Article 3, their Constitutions, the freedom and the rights of the people and the constitutional rights of citizens, as well as the rights and powers which the people has conferred upon the authorities.

Article 14.

When a dispute arises between two Cantons they shall not take any independent action nor resort to arms, but are to submit duly to the decision of the Federation.

Article 27.

The Confederation is entitled to establish a Federal university and other institutions of higher education, in addition to the already existing Polytechnic School, and to subsidize institutions of this nature.

The Cantons provide for adequate primary education, which shall be exclusively under the control of the civil authority. Such education is compulsory and, in the public schools, free.

The public schools shall be such that they may be attended by adherents of all religious sects without any offence to their freedom of conscience or belief.

The Confederation shall take the necessary measures against Cantons which fail to fulfil these obligations.

Article 27 bis.

Subsidies shall be paid to the Cantons to help them fulfil their obligations in the field of primary education.

The details shall be settled by law.

Organization, control, and supervision of primary schools remain Cantonal matters, subject to Article 27.

Article 31 bis.

Within the limits of its constitutional powers, the Confederation shall take measures to increase the general welfare and to ensure the economic security of the citizens.

While safeguarding the general interests of the national economy, the Confederation may regulate the exercise of trades and industry and take measures in favour of particular economic classes or professions. In the exercise of this power the Confederation shall respect the principle of Freedom of Trade and Industry, except as provided in paragraph 3.

When the public interest justifies it the Confederation has the power to make provisions infringing, if necessary, the Freedom of Trade and Industry:

- (a) to preserve important economic classes, or professions, whose survival is threatened, and to encourage independent producers in such economic classes or professions;
- (b) to preserve a strong peasantry, to encourage agriculture, and to strengthen the position of rural property-owners;
- (c) to protect districts whose economic life is threatened;
- (d) to prevent harmful social or economic effects of cartels or similar organizations;
- (e) to take precautions against the event of war.

Professions and economic classes shall only be protected under the headings (a) and (b) if they have themselves taken such measures of mutual assistance as can be fairly expected of them.

Federal legislation under (a) and (b) shall safeguard the development of groups based upon mutual assistance.

Article 49.

Freedom of conscience and belief is inviolable.

No one may be compelled to be a member of a religious association, to receive a religious education, to take part in a religious ceremony, or to suffer punishment of any sort by reason of religious opinion.

The father or guardian has the right of determining the religious education a child shall receive, in conformity with the principles stipulated above, until the child's sixteenth birthday.

Exercise of civil or political rights may not be restricted by any religious or ecclesiastical conditions or prescriptions whatever.

Article 49.

No one is released from performance of his civil duties by reason of his religious beliefs.

No one is obliged to pay taxes devoted especially to the special expenses of the ritual of a religious community to which he does not belong. Further execution of this principle is reserved to Federal legislation.

Article 50.

The free practice of religious ceremonies is guaranteed within the limits of public order and decency.

The Cantons and the Confederation may take the necessary measures to maintain public order and peace between adherents of different religious communities, and to combat the encroachments of ecclesiastical authorities on the rights of citizens or of the State.

Conflicts of public or private law arising out of the creation of new religious communities or a schism of old ones may be brought on appeal before the competent Federal authorities.

No bishoprics may be set up on Swiss territory without the consent of the Confederation.

Article 51.

The order of Jesuits and societies affiliated thereto can be received in no part of Switzerland, and are forbidden to take any part in Church or school affairs.

A Federal Arrêté may extend this prohibition to other religious orders whose activity is dangerous to the State or disturbs the peaceable relationship of religious denominations.

Article 52.

The founding of new convents or religious orders, and the re-establishment of those which have been suppressed, are both prohibited.

Article 60

Cantons are obliged to treat the citizens of other Confederate States as favourably as their own citizens, in legislation and before their courts of law.

Article 107.

Members and deputy members of the Federal Tribunal shall be elected by the Federal Assembly, which shall see that the three official languages of the Confederation are represented upon it.

A Law shall provide for the method of organization of the Federal Tribunal and the sections thereof, the number of its members and deputy members, their term of office and their pay.

Article 116.

German, French, Italian, and Romanche are the national languages of Switzerland.

German, French, and Italian shall be deemed the official languages of the Confederation.

